



IOWA ADMINISTRATIVE BULLETIN

Published Biweekly

VOLUME XLVI
October 18, 2023

NUMBER 8
Pages 1357 to 1595

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PREFACE

The Iowa Administrative Bulletin is published biweekly pursuant to Iowa Code chapters 2B and 17A and contains Notices of Intended Action and rules adopted by state agencies.

It also contains Proclamations and Executive Orders of the Governor which are general and permanent in nature; Regulatory Analyses; effective date delays and objections filed by the Administrative Rules Review Committee; Agenda for monthly Administrative Rules Review Committee meetings; and other materials deemed fitting and proper by the Administrative Rules Review Committee.

The Bulletin may also contain public funds interest rates [12C.6]; usury rates [535.2(3)“a”]; agricultural credit corporation maximum loan rates [535.12]; and other items required by statute to be published in the Bulletin.

PLEASE NOTE: Underscore indicates new material added to existing rules; ~~strike-through~~ indicates deleted material.

JACK EWING, Administrative Code Editor
Publications Editing Office (Administrative Code)

Telephone: 515.281.6048
Telephone: 515.281.3355

Email: Jack.Ewing@legis.iowa.gov
Email: AdminCode@legis.iowa.gov

CITATION of Administrative Rules

The Iowa Administrative Code shall be cited as (agency identification number) IAC (chapter, rule, subrule, paragraph, subparagraph, or numbered paragraph).

This citation format applies only to external citations to the Iowa Administrative Code or Iowa Administrative Bulletin and does not apply to citations within the Iowa Administrative Code or Iowa Administrative Bulletin.

441 IAC 79	(Chapter)
441 IAC 79.1	(Rule)
441 IAC 79.1(1)	(Subrule)
441 IAC 79.1(1)“a”	(Paragraph)
441 IAC 79.1(1)“a”(1)	(Subparagraph)
441 IAC 79.1(1)“a”(1)“1”	(Numbered paragraph)

The Iowa Administrative Bulletin shall be cited as IAB (volume), (number), (publication date), (page number), (ARC number).

IAB Vol. XII, No. 23 (5/16/90) p. 2050, ARC 872A

NOTE: In accordance with Iowa Code section 2B.5A, a rule number within the Iowa Administrative Code includes a reference to the statute which the rule is intended to implement: 441—79.1(249A).

Schedule for Rulemaking 2023

NOTICE† SUBMISSION DEADLINE	NOTICE PUB. DATE	HEARING OR COMMENTS 20 DAYS	FIRST POSSIBLE ADOPTION DATE 35 DAYS	ADOPTED FILING DEADLINE	ADOPTED PUB. DATE	FIRST POSSIBLE EFFECTIVE DATE	POSSIBLE EXPIRATION OF NOTICE 180 DAYS
Dec. 21 '22	Jan. 11 '23	Jan. 31 '23	Feb. 15 '23	Feb. 17 '23	Mar. 8 '23	Apr. 12 '23	July 10 '23
Jan. 4	Jan. 25	Feb. 14	Mar. 1	Mar. 3	Mar. 22	Apr. 26	July 24
Jan. 20	Feb. 8	Feb. 28	Mar. 15	Mar. 17	Apr. 5	May 10	Aug. 7
Feb. 3	Feb. 22	Mar. 14	Mar. 29	Mar. 31	Apr. 19	May 24	Aug. 21
Feb. 17	Mar. 8	Mar. 28	Apr. 12	Apr. 14	May 3	June 7	Sep. 4
Mar. 3	Mar. 22	Apr. 11	Apr. 26	Apr. 28	May 17	June 21	Sep. 18
Mar. 17	Apr. 5	Apr. 25	May 10	**May 10**	May 31	July 5	Oct. 2
Mar. 31	Apr. 19	May 9	May 24	May 26	June 14	July 19	Oct. 16
Apr. 14	May 3	May 23	June 7	June 9	June 28	Aug. 2	Oct. 30
Apr. 28	May 17	June 6	June 21	**June 21**	July 12	Aug. 16	Nov. 13
May 10	May 31	June 20	July 5	July 7	July 26	Aug. 30	Nov. 27
May 26	June 14	July 4	July 19	July 21	Aug. 9	Sep. 13	Dec. 11
June 9	June 28	July 18	Aug. 2	Aug. 4	Aug. 23	Sep. 27	Dec. 25
June 21	July 12	Aug. 1	Aug. 16	**Aug. 16**	Sep. 6	Oct. 11	Jan. 8 '24
July 7	July 26	Aug. 15	Aug. 30	Sep. 1	Sep. 20	Oct. 25	Jan. 22 '24
July 21	Aug. 9	Aug. 29	Sep. 13	Sep. 15	Oct. 4	Nov. 8	Feb. 5 '24
Aug. 4	Aug. 23	Sep. 12	Sep. 27	Sep. 29	Oct. 18	Nov. 22	Feb. 19 '24
Aug. 16	Sep. 6	Sep. 26	Oct. 11	Oct. 13	Nov. 1	Dec. 6	Mar. 4 '24
Sep. 1	Sep. 20	Oct. 10	Oct. 25	**Oct. 25**	Nov. 15	Dec. 20	Mar. 18 '24
Sep. 15	Oct. 4	Oct. 24	Nov. 8	**Nov. 8**	Nov. 29	Jan. 3 '24	Apr. 1 '24
Sep. 29	Oct. 18	Nov. 7	Nov. 22	**Nov. 22**	Dec. 13	Jan. 17 '24	Apr. 15 '24
Oct. 13	Nov. 1	Nov. 21	Dec. 6	**Dec. 6**	Dec. 27	Jan. 31 '24	Apr. 29 '24
Oct. 25	Nov. 15	Dec. 5	Dec. 20	**Dec. 20**	Jan. 10 '24	Feb. 14 '24	May 13 '24
Nov. 8	Nov. 29	Dec. 19	Jan. 3 '24	**Jan. 3 '24**	Jan. 24 '24	Feb. 28 '24	May 27 '24
Nov. 22	Dec. 13	Jan. 2 '24	Jan. 17 '24	Jan. 19 '24	Feb. 7 '24	Mar. 13 '24	June 10 '24
Dec. 6	Dec. 27	Jan. 16 '24	Jan. 31 '24	Feb. 2 '24	Feb. 21 '24	Mar. 27 '24	June 24 '24
Dec. 20	Jan. 10 '24	Jan. 30 '24	Feb. 14 '24	Feb. 16 '24	Mar. 6 '24	Apr. 10 '24	July 8 '24

PRINTING SCHEDULE FOR IAB

<u>ISSUE NUMBER</u>	<u>SUBMISSION DEADLINE</u>	<u>ISSUE DATE</u>
10	Wednesday, October 25, 2023	November 15, 2023
11	Wednesday, November 8, 2023	November 29, 2023
12	Wednesday, November 22, 2023	December 13, 2023

PLEASE NOTE:

Rules will not be accepted by the Publications Editing Office after **12 o'clock noon** on the filing deadline unless prior approval has been received from the Administrative Rules Coordinator and the Administrative Code Editor.

If the filing deadline falls on a legal holiday, submissions made on the following Monday will be accepted.

†To allow time for review by the Administrative Rules Coordinator prior to the Notice submission deadline, Notices should generally be submitted in RMS four or more working days in advance of the deadline.

****Note change of filing deadline****

CITY DEVELOPMENT BOARD[263]

Organization and administration, ch 1 IAB 10/4/23 Regulatory Analysis	1963 Bell Ave. Des Moines, Iowa	October 24, 2023 12:30 to 12:45 p.m.
Agency procedure for rulemaking, ch 2 IAB 10/4/23 Regulatory Analysis	1963 Bell Ave. Des Moines, Iowa	October 24, 2023 12:45 to 1 p.m.
Petitions for rulemaking, ch 3 IAB 10/4/23 Regulatory Analysis	1963 Bell Ave. Des Moines, Iowa	October 24, 2023 1 to 1:15 p.m.
Declaratory orders, ch 4 IAB 10/4/23 Regulatory Analysis	1963 Bell Ave. Des Moines, Iowa	October 24, 2023 1:15 to 1:30 p.m.
Fair information practices, ch 5 IAB 10/4/23 Regulatory Analysis	1963 Bell Ave. Des Moines, Iowa	October 24, 2023 1:30 to 1:45 p.m.
Waiver rules, ch 6 IAB 10/4/23 Regulatory Analysis	1963 Bell Ave. Des Moines, Iowa	October 24, 2023 1:45 to 2 p.m.
Voluntary annexation, ch 7 IAB 10/4/23 Regulatory Analysis	1963 Bell Ave. Des Moines, Iowa	October 24, 2023 2:15 to 2:45 p.m.
Petitions for involuntary city development action, ch 8 IAB 10/4/23 Regulatory Analysis	1963 Bell Ave. Des Moines, Iowa	October 24, 2023 2:45 to 3:15 p.m.
Committee proceedings on petitions for involuntary city development action, ch 9 IAB 10/4/23 Regulatory Analysis	1963 Bell Ave. Des Moines, Iowa	October 24, 2023 3:15 to 3:45 p.m.
Board proceedings on petitions for involuntary boundary change after committee approval, ch 10 IAB 10/4/23 Regulatory Analysis	1963 Bell Ave. Des Moines, Iowa	October 24, 2023 3:45 to 4:15 p.m.
Islands—identification and annexation, rescind ch 11 IAB 10/4/23 Regulatory Analysis	1963 Bell Ave. Des Moines, Iowa	October 24, 2023 4:15 to 4:30 p.m.

COLLEGE STUDENT AID COMMISSION[283]

Uniform policies; future ready Iowa skilled workforce grant program; workforce grant and incentive program, amend ch 10; adopt chs 16, 34 IAB 10/4/23 ARC 7100C	Commission Board Room 475 S.W. Fifth St., Suite D Des Moines, Iowa	October 25, 2023 4 to 4:30 p.m.
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Commission Board Room 475 S.W. Fifth St., Suite D Des Moines, Iowa	October 26, 2023 4 to 4:30 p.m.
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INSPECTIONS AND APPEALS DEPARTMENT[481]

Home food processing establishments, ch 34 IAB 10/18/23 Regulatory Analysis	6200 Park Ave. Des Moines, Iowa	November 8, 2023 9:20 a.m.
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EDUCATION DEPARTMENT[281]

Organization and operation, ch 1 IAB 10/4/23 ARC 7082C	State Board Room, Second Floor Grimes State Office Bldg. Des Moines, Iowa	October 24, 2023 9 to 9:30 a.m.
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Jim Hester Board Room, Second Floor Achievement Service Center 1702 N. Main St. Davenport, Iowa	October 24, 2023 5 to 5:30 p.m.
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Agency procedure for rulemaking and petitions for rulemaking, ch 2 IAB 10/4/23 ARC 7083C	State Board Room, Second Floor Grimes State Office Bldg. Des Moines, Iowa	October 24, 2023 9 to 9:30 a.m.
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Jim Hester Board Room, Second Floor Achievement Service Center 1702 N. Main St. Davenport, Iowa	October 24, 2023 5 to 5:30 p.m.
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Declaratory orders, ch 3 IAB 10/4/23 ARC 7084C	State Board Room, Second Floor Grimes State Office Bldg. Des Moines, Iowa	October 24, 2023 9 to 9:30 a.m.
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Jim Hester Board Room, Second Floor Achievement Service Center 1702 N. Main St. Davenport, IA 52803	October 24, 2023 5 to 5:30 p.m.
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Waivers from administrative rules, ch 4 IAB 10/4/23 ARC 7085C	State Board Room, Second Floor Grimes State Office Bldg. Des Moines, Iowa	October 24, 2023 9 to 9:30 a.m.
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Jim Hester Board Room, Second Floor Achievement Service Center 1702 N. Main St. Davenport, Iowa	October 24, 2023 5 to 5:30 p.m.
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EDUCATION DEPARTMENT[281](cont'd)

Appeal procedures, ch 6 IAB 10/4/23 ARC 7088C	State Board Room, Second Floor Grimes State Office Bldg. Des Moines, Iowa	October 24, 2023 9 to 9:30 a.m.
	Jim Hester Board Room, Second Floor Achievement Service Center 1702 N. Main St. Davenport, Iowa	October 24, 2023 5 to 5:30 p.m.
Criteria for grants, ch 7 IAB 10/4/23 ARC 7089C	State Board Room, Second Floor Grimes State Office Bldg. Des Moines, Iowa	October 24, 2023 9 to 9:30 a.m.
	Jim Hester Board Room, Second Floor Achievement Service Center 1702 N. Main St. Davenport, Iowa	October 24, 2023 5 to 5:30 p.m.
Statewide voluntary preschool program, ch 16 IAB 10/4/23 ARC 7090C	State Board Room, Second Floor Grimes State Office Bldg. Des Moines, Iowa	October 24, 2023 9:30 to 10 a.m.
	Room 1070 Des Moines Roosevelt High School 4419 Center St. Des Moines, Iowa	October 24, 2023 5 to 5:30 p.m.
School fees, ch 18 IAB 10/4/23 ARC 7091C	State Board Room, Second Floor Grimes State Office Bldg. Des Moines, Iowa	October 24, 2023 9:30 to 10 a.m.
	Room 1070 Des Moines Roosevelt High School 4419 Center St. Des Moines, Iowa	October 24, 2023 5 to 5:30 p.m.
Charter schools, adopt ch 19; rescind ch 68 IAB 10/4/23 ARC 7092C	State Board Room, Second Floor Grimes State Office Bldg. Des Moines, Iowa	October 24, 2023 9:30 to 10 a.m.
	Room 1070 Des Moines Roosevelt High School 4419 Center St. Des Moines, Iowa	October 24, 2023 5 to 5:30 p.m.
Educating homeless children and youth, ch 33 IAB 10/4/23 ARC 7087C	State Board Room, Second Floor Grimes State Office Bldg. Des Moines, Iowa	October 24, 2023 10 to 10:30 a.m.
	Room 1070 Des Moines Roosevelt High School 4419 Center St. Des Moines, Iowa	October 24, 2023 5 to 5:30 p.m.

EDUCATION DEPARTMENT[281](cont'd)

Veterans' education and training, adopt ch 51; rescind ch 52 IAB 10/4/23 ARC 7093C	State Board Room, Second Floor Grimes State Office Bldg. Des Moines, Iowa	October 24, 2023 10 to 10:30 a.m.
	Room 1070 Des Moines Roosevelt High School 4419 Center St. Des Moines, Iowa	October 24, 2023 5 to 5:30 p.m.
School breakfast and lunch program; nutritional content standards for other foods and beverages, ch 58 IAB 10/4/23 ARC 7094C	State Board Room, Second Floor Grimes State Office Bldg. Des Moines, Iowa	October 24, 2023 10 to 10:30 a.m.
	Room 1070 Des Moines Roosevelt High School 4419 Center St. Des Moines, Iowa	October 24, 2023 5 to 5:30 p.m.
Gifted and talented programs, ch 59 IAB 10/4/23 ARC 7081C	State Board Room, Second Floor Grimes State Office Bldg. Des Moines, Iowa	October 24, 2023 9:30 to 10 a.m.
	Room 1070 Des Moines Roosevelt High School 4419 Center St. Des Moines, Iowa	October 24, 2023 5 to 5:30 p.m.
Programs for students who are English learners, ch 60 IAB 10/4/23 ARC 7086C	State Board Room, Second Floor Grimes State Office Bldg. Des Moines, Iowa	October 24, 2023 9:30 to 10 a.m.
	Room 1070 Des Moines Roosevelt High School 4419 Center St. Des Moines, Iowa	October 24, 2023 5 to 5:30 p.m.
Programs for at-risk early elementary students, ch 65 IAB 10/4/23 ARC 7095C	State Board Room, Second Floor Grimes State Office Bldg. Des Moines, Iowa	October 24, 2023 10 to 10:30 a.m.
	Room 1070 Des Moines Roosevelt High School 4419 Center St. Des Moines, Iowa	October 24, 2023 5 to 5:30 p.m.
Standards for school administration manager programs, ch 82 IAB 10/4/23 ARC 7096C	State Board Room, Second Floor Grimes State Office Bldg. Des Moines, Iowa	October 24, 2023 10:30 to 11 a.m.
	Jim Hester Board Room, Second Floor Achievement Service Center 1702 N. Main St. Davenport, Iowa	October 24, 2023 5:30 to 6 p.m.

EDUCATION DEPARTMENT[281](cont'd)

Financial incentives for national board certification, ch 84 IAB 10/4/23 ARC 7097C	State Board Room, Second Floor Grimes State Office Bldg. Des Moines, Iowa	October 24, 2023 10:30 to 11 a.m.
	Jim Hester Board Room, Second Floor Achievement Service Center 1702 N. Main St. Davenport, Iowa	October 24, 2023 5:30 to 6 p.m.
Equal employment opportunity and affirmative action in educational agencies, ch 95 IAB 10/4/23 ARC 7098C	State Board Room, Second Floor Grimes State Office Bldg. Des Moines, Iowa	October 24, 2023 10:30 to 11 a.m.
	Jim Hester Board Room, Second Floor Achievement Service Center 1702 N. Main St. Davenport, Iowa	October 24, 2023 5:30 to 6 p.m.
Business procedures and deadlines, ch 99 IAB 10/4/23 ARC 7099C	Jim Hester Board Room, Second Floor Achievement Service Center 1702 N. Main St. Davenport, Iowa	October 24, 2023 5:30 to 6 p.m.
	State Board Room, Second Floor Grimes State Office Bldg. Des Moines, Iowa	October 24, 2023 10:30 to 11 a.m.

MANAGEMENT DEPARTMENT[541]

Organization and operation, ch 1 IAB 9/20/23 Regulatory Analysis	State Capitol, G14 1007 East Grand Ave. Des Moines, Iowa	October 18, 2023 9 a.m.
Petitions for rulemaking, ch 5 IAB 9/20/23 Regulatory Analysis	State Capitol, G14 1007 East Grand Ave. Des Moines, Iowa	October 18, 2023 9 a.m.
Declaratory orders, ch 6 IAB 9/20/23 Regulatory Analysis	State Capitol, G14 1007 East Grand Ave. Des Moines, Iowa	October 18, 2023 9 a.m.
Agency procedure for rulemaking, ch 7 IAB 9/20/23 Regulatory Analysis	State Capitol, G14 1007 East Grand Ave. Des Moines, Iowa	October 18, 2023 9 a.m.
Public records and fair information practices, ch 8 IAB 9/20/23 Regulatory Analysis	State Capitol, G14 1007 East Grand Ave. Des Moines, Iowa	October 18, 2023 9 a.m.
Grants enterprise management system, ch 11 IAB 9/20/23 Regulatory Analysis	State Capitol, G14 1007 East Grand Ave. Des Moines, Iowa	October 18, 2023 9 a.m.

MANAGEMENT DEPARTMENT[541](cont'd)

DAS customer council, ch 12 IAB 9/20/23 Regulatory Analysis	State Capitol, G14 1007 East Grand Ave. Des Moines, Iowa	October 18, 2023 9 a.m.
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Suspension and reinstatement of state funds, ch 13 IAB 9/20/23 Regulatory Analysis	State Capitol, G14 1007 East Grand Ave. Des Moines, Iowa	October 18, 2023 9 a.m.
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Suspension and reinstatement of state funds, rescind ch 16 IAB 9/20/23 Regulatory Analysis	State Capitol, G14 1007 East Grand Ave. Des Moines, Iowa	October 18, 2023 9 a.m.
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REVENUE DEPARTMENT[701]

Settlement authority, rescind ch 3; amend chs 7, 10, 101, 108, 254, 300, 305, 504, 603, 700, 900; adopt ch 19 IAB 10/18/23 ARC 7101C	Via video/conference call Contact Alana Stamas Email: alana.stamas@iowa.gov	November 8, 2023 1 to 2 p.m. (If requested)
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Collection of tax debt and debt owed to other state agencies, adopt chs 20 to 25, 27 IAB 10/4/23 Regulatory Analysis	Via video/conference call: meet.google.com/toe-himx-omj PH: 252.590.0724 PIN: 233 808 257# Mute telephone or microphone upon entering the meeting	October 25, 2023 1 p.m.
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Definitions, ch 200 IAB 10/4/23 Regulatory Analysis	Via video/conference call: meet.google.com/cox-brcn-tok?hs=122&authuser=0	October 25, 2023 9 a.m. to 12 noon
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Sales and use tax permits, ch 201 IAB 10/18/23 Regulatory Analysis	Via video/conference call: meet.google.com/msc-ekdk-xws PH: 262.864.1688 PIN: 672 555 995#	November 8, 2023 9 a.m. to 12 noon
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Filing returns and payment of tax, ch 202 IAB 10/18/23 Regulatory Analysis	Via video/conference call: meet.google.com/msc-ekdk-xws PH: 262.864.1688 PIN: 672 555 995#	November 8, 2023 9 a.m. to 12 noon
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Elements included in and excluded from a taxable sale and sales price, ch 203 IAB 10/4/23 Regulatory Analysis	Via video/conference call: meet.google.com/cox-brcn-tok?hs=122&authuser=0	October 25, 2023 9 a.m. to 12 noon
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Rules necessary to implement the streamlined sales and use tax agreement, ch 204 IAB 10/4/23 Regulatory Analysis	Via video/conference call: meet.google.com/cox-brcn-tok?hs=122&authuser=0	October 25, 2023 9 a.m. to 12 noon
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REVENUE DEPARTMENT[701](cont'd)

Sourcing of taxable services, tangible personal property, and specified digital products, ch 205 IAB 10/4/23 Regulatory Analysis	Via video/conference call: meet.google.com/cox-brcn-tok?hs=122&authuser=0	October 25, 2023 9 a.m. to 12 noon
Bundled transactions, ch 206 IAB 10/4/23 Regulatory Analysis	Via video/conference call: meet.google.com/cox-brcn-tok?hs=122&authuser=0	October 25, 2023 9 a.m. to 12 noon
Remote sales and marketplace sales, ch 207 IAB 10/18/23 Regulatory Analysis	Via video/conference call: meet.google.com/msc-ekdk-xws PH: 262.864.1688 PIN: 672 555 995#	November 8, 2023 9 a.m. to 12 noon
Multilevel marketer agreements, ch 208 IAB 10/18/23 Regulatory Analysis	Via video/conference call: meet.google.com/msc-ekdk-xws PH: 262.864.1688 PIN: 672 555 995#	November 8, 2023 9 a.m. to 12 noon
Agricultural rules, ch 214 IAB 10/18/23 Regulatory Analysis	Via video/conference call: meet.google.com/msc-ekdk-xws PH: 262.864.1688 PIN: 672 555 995#	November 8, 2023 9 a.m. to 12 noon
Exemptions primarily benefiting manufacturers and other persons engaged in processing, ch 215 IAB 10/18/23 Regulatory Analysis	Via video/conference call: meet.google.com/msc-ekdk-xws PH: 262.864.1688 PIN: 672 555 995#	November 8, 2023 9 a.m. to 12 noon
Telecommunication services, ch 217 IAB 10/18/23 Regulatory Analysis	Via video/conference call: meet.google.com/msc-ekdk-xws PH: 262.864.1688 PIN: 672 555 995#	November 8, 2023 9 a.m. to 12 noon
Resale and processing exemptions primarily of benefit to retailers, ch 225 IAB 10/4/23 Regulatory Analysis	Via video/conference call: meet.google.com/cox-brcn-tok?hs=122&authuser=0	October 25, 2023 9 a.m. to 12 noon
Local option sales and services tax, ch 270 IAB 10/4/23 Regulatory Analysis	Via video/conference call: meet.google.com/cox-brcn-tok?hs=122&authuser=0	October 25, 2023 9 a.m. to 12 noon

REVENUE DEPARTMENT[701](cont'd)

Flood mitigation program, ch 272 IAB 10/18/23 Regulatory Analysis	Via video/conference call: meet.google.com/msc-ekdk-xws PH: 262.864.1688 PIN: 672 555 995#	November 8, 2023 9 a.m. to 12 noon
Reinvestment districts program, ch 273 IAB 10/18/23 Regulatory Analysis	Via video/conference call: meet.google.com/msc-ekdk-xws PH: 262.864.1688 PIN: 672 555 995#	November 8, 2023 9 a.m. to 12 noon
Local option sales tax urban renewal projects, ch 274 IAB 10/4/23 Regulatory Analysis	Via video/conference call: meet.google.com/cox-brcn-tok?hs=122&authuser=0	October 25, 2023 9 a.m. to 12 noon
Rebate of Iowa sales tax paid, ch 275 IAB 10/18/23 Regulatory Analysis	Via video/conference call: meet.google.com/msc-ekdk-xws PH: 262.864.1688 PIN: 672 555 995#	November 8, 2023 9 a.m. to 12 noon
Facilitating business rapid response to state-declared disasters, ch 276 IAB 10/4/23 Regulatory Analysis	Via video/conference call: meet.google.com/cox-brcn-tok?hs=122&authuser=0	October 25, 2023 9 a.m. to 12 noon
Sales and use tax refund for biodiesel production, ch 277 IAB 10/4/23 Regulatory Analysis	Via video/conference call: meet.google.com/cox-brcn-tok?hs=122&authuser=0	October 25, 2023 9 a.m. to 12 noon
Refunds for eligible businesses under economic development authority programs, ch 278 IAB 10/4/23 Regulatory Analysis	Via video/conference call: meet.google.com/cox-brcn-tok?hs=122&authuser=0	October 25, 2023 9 a.m. to 12 noon

TRANSPORTATION DEPARTMENT[761]

Commercial driver's licenses; commercial learner's permits, amendments to chs 511, 607 IAB 10/18/23 Regulatory Analysis	Motor Vehicle Division, First Floor Training Room 6310 SE Convenience Blvd. Ankeny, Iowa	November 13, 2023 10 a.m.
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UTILITIES DIVISION[199]

Forms, rescind ch 2 IAB 9/20/23 Regulatory Analysis	Board Hearing Room 1375 E. Court Ave. Des Moines, Iowa	October 18, 2023 9 a.m.
Electronic filing, ch 14 IAB 9/20/23 Regulatory Analysis	Board Hearing Room 1375 E. Court Ave. Des Moines, Iowa	October 18, 2023 2 to 4 p.m.

UTILITIES DIVISION[199](cont'd)

Assessments, ch 17 IAB 10/4/23 Regulatory Analysis	Board Hearing Room 1375 E. Court Ave. Des Moines, Iowa	October 31, 2023 9 a.m.
Annual report, ch 23 IAB 10/4/23 Regulatory Analysis	Board Hearing Room 1375 E. Court Ave. Des Moines, Iowa	October 26, 2023 1 p.m.
Access to affiliate records, requirements for annual filings, and asset and service transfers, ch 31 IAB 9/20/23 Regulatory Analysis	Board Hearing Room 1375 E. Court Ave. Des Moines, Iowa	October 19, 2023 2 p.m.

VETERINARY MEDICINE BOARD[811]

Description of organization and definitions, ch 1 IAB 10/18/23 Regulatory Analysis	Second Floor Conference Room Wallace State Office Bldg. Des Moines, Iowa	November 13, 2023 10 a.m.
Petitions for rulemaking, ch 2 IAB 10/18/23 Regulatory Analysis	Second Floor Conference Room Wallace State Office Bldg. Des Moines, Iowa	November 13, 2023 10 a.m.
Declaratory orders, ch 3 IAB 10/18/23 Regulatory Analysis	Second Floor Conference Room Wallace State Office Bldg. Des Moines, Iowa	November 13, 2023 10 a.m.
Agency procedure for rulemaking, ch 4 IAB 10/18/23 Regulatory Analysis	Second Floor Conference Room Wallace State Office Bldg. Des Moines, Iowa	November 13, 2023 10 a.m.
Public records and fair information practices, ch 5 IAB 10/18/23 Regulatory Analysis	Second Floor Conference Room Wallace State Office Bldg. Des Moines, Iowa	November 13, 2023 10 a.m.
Application for veterinary licensure, ch 6 IAB 10/18/23 Regulatory Analysis	Second Floor Conference Room Wallace State Office Bldg. Des Moines, Iowa	November 13, 2023 10 a.m.
Veterinary examinations, ch 7 IAB 10/18/23 Regulatory Analysis	Second Floor Conference Room Wallace State Office Bldg. Des Moines, Iowa	November 13, 2023 10 a.m.
Auxiliary personnel, ch 8 IAB 10/18/23 Regulatory Analysis	Second Floor Conference Room Wallace State Office Bldg. Des Moines, Iowa	November 13, 2023 10 a.m.

VETERINARY MEDICINE BOARD[811]

Temporary veterinary permits, ch 9 IAB 10/18/23 Regulatory Analysis	Second Floor Conference Room Wallace State Office Bldg. Des Moines, Iowa	November 13, 2023 10 a.m.
Discipline; contested cases, chs 10, 16 IAB 10/18/23 Regulatory Analysis	Second Floor Conference Room Wallace State Office Bldg. Des Moines, Iowa	November 13, 2023 10 a.m.
Continuing education, ch 11 IAB 10/18/23 Regulatory Analysis	Second Floor Conference Room Wallace State Office Bldg. Des Moines, Iowa	November 13, 2023 10 a.m.
Standards of practice, ch 12 IAB 10/18/23 Regulatory Analysis	Second Floor Conference Room Wallace State Office Bldg. Des Moines, Iowa	November 13, 2023 10 a.m.
Collection procedures, ch 13 IAB 10/18/23 Regulatory Analysis	Second Floor Conference Room Wallace State Office Bldg. Des Moines, Iowa	November 13, 2023 10 a.m.
Waiver of rules, ch 14 IAB 10/18/23 Regulatory Analysis	Second Floor Conference Room Wallace State Office Bldg. Des Moines, Iowa	November 13, 2023 10 a.m.

The following list will be updated as changes occur.

“Umbrella” agencies and elected officials are set out below at the left-hand margin in CAPITAL letters.

Divisions (boards, commissions, etc.) are indented and set out in lowercase type under their statutory “umbrellas.”

Other autonomous agencies are included alphabetically in SMALL CAPITALS at the left-hand margin.

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Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 481—Chapter 34
“Home Food Processing Establishments”

Iowa Code section(s) or chapter(s) authorizing rulemaking: 137D.2(8)
State or federal law(s) implemented by the rulemaking: Iowa Code chapter 137D and 2023 Iowa Acts, House File 661

Public Hearing

A public hearing at which persons may present their views orally or in writing will be held as follows:

November 8, 2023
9:20 a.m.

Department of Inspections, Appeals,
and Licensing
6200 Park Avenue
Des Moines, Iowa

Public Comment

Any interested person may submit written or oral comments concerning this Regulatory Analysis. Written or oral comments in response to this Regulatory Analysis must be received by the Department of Inspections, Appeals, and Licensing no later than 4:30 p.m. on the date of the public hearing. Comments should be directed to:

Ashleigh Hackel
Iowa Department of Inspections, Appeals, and Licensing
6200 Park Avenue
Des Moines, Iowa 50321
Phone: 515.250.3746
Email: ashleigh.hackel@dia.iowa.gov

Purpose and Summary

This proposed rulemaking repromulgates Chapter 34, “Home Food Processing Establishments,” and implements Iowa Code chapter 137D and 2023 Iowa Acts, House File 661, in accordance with the goals and directives of Executive Order 10 (January 10, 2023). The rulemaking administers Iowa Code section 137D.2 by establishing an application process and standards for payments, refunds, and reporting of gross sales. It also establishes basic standards to protect food from contamination and the health of consumers, including standards related to:

- The physical structure of the home food processing establishment, pest control, equipment, water supply, waste disposal, and handling of toxic material;
- Food handlers, including food safety hazard control, training, hygiene, and communicable disease prevention;
- Food received by the establishment, storage of food in the establishment, and distribution of foods from the establishment;
- Food protection, including temperature control, pH control, and water activity control.
- Food labeling;
- Sanitation of food contact surfaces and food processing areas; and
- Record requirements intended to trace, identify, and remove from the market foods that pose an immediate public health risk.

The rules also set forth the administrative process for enforcing Iowa Code chapter 137D and 481—Chapter 34, including the process for inspections and the denial, suspension, or revocation of a license.

Analysis of Impact

1. Persons affected by the proposed rulemaking:

- Classes of persons that will bear the costs of the proposed rulemaking:

Home food processing establishment license holders will bear the costs of the proposed rulemaking.

- Classes of persons that will benefit from the proposed rulemaking:

Consumers that purchase and consume homemade food items prepared under the proposed rules will benefit from the proposed rulemaking. These rules also benefit home food processing establishment license holders by providing clear, simple, and effective food safety guidelines.

2. Impact of the proposed rulemaking, economic or otherwise, including the nature and amount of all the different kinds of costs that would be incurred:

- Quantitative description of impact:

Since the proposed rules focus more on control of food safety hazards by the permit holder and less on specific physical facility and equipment requirements, the quantitative costs are minimal and will vary depending on the scope and preferences of each establishment. There is a food safety training course that is required. The one-time cost of the course can range from \$10 for a basic course to \$200 for a comprehensive course.

The rules are written in such a manner that a typical residential kitchen would meet the regulatory requirements; however, each establishment may choose to purchase additional or specialized equipment to meet the needs of each establishment. Additional food thermometers may be required beyond what a typical residential kitchen possesses, and these food thermometers can be purchased for less than \$20. While most establishments will not require a recipe evaluation, those that do will incur a cost of \$10 to \$45 per recipe. If an establishment prepares food that uses pH as a safety control, a pH meter is necessary, and these can range in cost from \$50 to several hundred dollars.

There will be some costs associated with labeling and packaging, but the rules are written in such a manner that allows flexibility and incurs minimal cost. There will also be a cost of cleaning and sanitizing supplies, but the cost of these supplies is not more than general residential cleaning and sanitizing supplies.

- Qualitative description of impact:

The Department considered food safety science and pertinent national research in the drafting of these proposed rules. The science includes established food safety parameters, such as time and temperature control, pH, water activity, and frequency of cleaning, that are known to destroy, reduce, or control spread and growth of pathogens. Studies completed by the Food and Drug Administration have shown that food operations that have developed and implemented their own food safety management systems are less likely to cause a foodborne illness.

In the development of the rules, the Department chose a more proactive food safety approach, where the rules are more focused on ensuring the operators identify and control food safety hazards in their own establishment, and to focus less on more costly physical facilities and equipment requirements that may be different, depending on the scope of each establishment. The rules have a solid food safety, science-based foundation and contain the needed operational flexibility that a small home-based establishment requires to meet business needs.

From a public health standpoint, the rules provide necessary food safety measures that can be easily implemented in a residential food establishment without requiring a large financial investment on the part of the operator. It also allows each establishment to invest when necessary if the establishment's scope and scale warrant additional investment.

3. Costs to the State:

- Implementation and enforcement costs borne by the agency or any other agency:

Licenses issued under this chapter account for 1.6542 percent of the Department's licensed establishment inventory and consume an equivalent percentage of the budget. This equals an annual cost of \$93,000 to implement and enforce this chapter. The Department assumes similar costs based on the specific inventories of home food processing establishments for local health departments that regulate and enforce this rule under a 28E agreement with the Department.

- Anticipated effect on state revenues:

License fees generated for establishments regulated under this chapter are expected to be \$25,000 annually. License fees are legislatively established within Iowa Code chapter 137D and are not set by rule.

4. Comparison of the costs and benefits of the proposed rulemaking to the costs and benefits of inaction:

The Centers for Disease Control and Prevention (CDC) estimates that each year 48 million Americans get sick from a foodborne illness, 128,000 are hospitalized, and 3,000 die. Currently, Iowa has approximately 1 percent of the U.S. population. This translates to an estimated 480,000 Iowans who get sick from a foodborne illness, including 1,280 hospitalizations and 30 deaths. An article titled "State Estimates for the Annual Cost of Foodborne Illness" published in the Journal of Food Protection in June 2015 states the estimated health cost of a foodborne illness in Iowa was \$176 per resident and \$1,154 per case in 2013. The article also used an enhanced model that included the cost of pain and suffering that nearly doubles these figures to \$301 per resident and \$1,972 per case. Based on CDC estimates and Iowa's population, the cost of foodborne illness to the State of Iowa is staggering, even using the 2013 figures included in the article.

Preventing just 1 percent of the estimated 480,000 foodborne illnesses in Iowa could result in health cost savings for Iowans to the tune of \$5.53 million annually (\$1,154 per case x 4,800 cases = \$5.53 million). The cost savings only rise when the cost of an outbreak for the establishment is figured. An article published in Science News, dated April 16, 2018, cited a study from researchers at the Johns Hopkins Bloomberg School of Public Health. The research findings estimated that the cost of a single outbreak for a restaurant could be \$4,000 for a small outbreak when five people get sick to \$1.9 million for an outbreak when 250 people get sick.

5. Determination whether less costly methods or less intrusive methods exist for achieving the purpose of the proposed rulemaking:

When the Department established the initial rules for this license in 2022, a significant effort was made to choose the least costly and least intrusive method to achieve the purpose and benefit of the rules. The rules are based on known food safety science, incorporate national studies, and are focused on ensuring individual establishments identify and control food safety hazards in individual establishments.

The least costly method to achieve public health was to establish rules that control food safety hazards without requiring an investment in commercial facilities and equipment. For instance, a residential kitchen equipped with typical residential appliances and utensils will meet the established rules. The individual establishment may choose to purchase additional or specialized equipment to meet individual business needs, but these are business decisions that are in the hands of the operator and not specifically required by the rule. Since the focus of the rules is on proactively identifying and controlling food safety hazards, much of the inspection is completed while reviewing policies, procedures, recipes and records that are developed by the operator and submitted to the agency electronically. This minimizes the time and resources required by both the operator and the agency. While there is still a public health need to conduct an inspection of the physical facilities and equipment to ensure basic standards are adequate to support safe food operations, a virtual inspection can accomplish this. Further, once a facility is able to demonstrate control over the food safety hazards in the facility's operation, less frequent inspections are necessary to ensure public health is protected.

6. Alternative methods considered by the agency:

- Description of any alternative methods that were seriously considered by the agency:

The Department researched and considered alternatives when establishing these rules in 2022, including home processed food sales and regulations in other states. It was determined that this chapter and the residential food operations covered in this chapter are unique to Iowa.

The Department's research showed that there are only two states, and none surrounding Iowa, that have laws allowing time/temperature control for safety foods prepared in a residential kitchen to be sold on a wholesale basis: Oregon and Wyoming. Of these two states, Oregon's law is most comparable to Iowa's Iowa Code chapter 137D in that Oregon's home kitchens are required to be licensed and inspected. Oregon's approach is that licensed "domestic kitchens" must meet Title 21 CFR Part 117, the federal regulations with which commercial food processing plants are required to comply (nationwide).

The Department considered using the Oregon approach whereby Iowa would adopt the same regulations that apply to commercial food establishments in Iowa, Title 21 CFR Part 117 or the 2017 FDA Model Food Code.

- Reasons why alternative methods were rejected in favor of the proposed rulemaking:

The Department determined that some of the provisions for commercial food operations would be more difficult to apply in a residential kitchen and costlier to the licensee. Additionally, the expected scope of operations of a home food processing establishment was anticipated to be smaller in scale and focused on fewer products and processes. Accordingly, the Department chose to develop a more simplified set of rules that would protect public health, would require minimal financial investment for a license holder and could be uniformly applied in a typical residential kitchen. In addition, the rules developed by the Department are written in a straightforward and simple manner that is easy for the public to understand.

Small Business Impact

If the rulemaking will have a substantial impact on small business, include a discussion of whether it would be feasible and practicable to do any of the following to reduce the impact of the rulemaking on small business:

- Establish less stringent compliance or reporting requirements in the rulemaking for small business.
- Establish less stringent schedules or deadlines in the rulemaking for compliance or reporting requirements for small business.
- Consolidate or simplify the rulemaking's compliance or reporting requirements for small business.
- Establish performance standards to replace design or operational standards in the rulemaking for small business.
- Exempt small business from any or all requirements of the rulemaking.

If legal and feasible, how does the rulemaking use a method discussed above to reduce the substantial impact on small business?

Home food processing establishments, as a whole, are more likely than other types of food processing establishments to be small businesses. As set forth above, the proposed rules are a less restrictive method to ensure food safety for these establishments. If a home food processing establishment identified a rule that was overly burdensome and the goals of which could be achieved in a manner that would reduce the impact on the small business, it could utilize the Department's established waiver process.

Text of Proposed Rulemaking

ITEM 1. Rescind 481—Chapter 34 and adopt the following **new** chapter in lieu thereof:

CHAPTER 34 HOME FOOD PROCESSING ESTABLISHMENTS

481—34.1(137D) Definitions. As used in this chapter, unless the context otherwise requires:

“Acidified foods” means low-acid foods to which an acid or high-acid food is added. Acidified foods have a water activity (a_w) greater than 0.85 and have a finished equilibrium pH of 4.60 or below. These foods may be called or may purport to be “pickles” or “pickled.”

“Active water” or *“water activity”* or *“(a_w)”* means the measured free moisture in a food. The quotient of the water vapor pressure of the food divided by the vapor pressure of pure water at the same temperature provides the measured free moisture in the food.

“Adulterated” means the same as stated 21 U.S.C. Section 342.

“Allergen cross contact” means the unintentional incorporation of a food allergen into a food.

“Contractor” means a municipal corporation, county, or other political subdivision that contracts with the department to license and inspect under Iowa Code chapter 137D.

“Cross contamination” means the inadvertent transfer of bacteria or other contaminants from one surface, substance, etc., to another, especially because of unsanitary handling procedures.

“Demonstrate control” means the ability to provide clear and convincing evidence that a home food processing establishment has implemented written standard processes and practices that are intended to control food safety hazards including but not limited to standardized recipes, standard operating procedures, personal hygiene standards, temperature monitoring records, equipment calibration records, production or batch records, sanitation records, predefined corrective actions, training documents, distribution records, and receiving records.

“Department” means the same as defined in Iowa Code section 137D.1.

“Equilibrium pH” means the final pH measured in a food after all the components of the food have achieved the same acidity.

“Fermentation” means a metabolic process in which an organism converts a carbohydrate, such as starch or a sugar, into an alcohol or an acid. For example, yeast performs fermentation by converting sugar into alcohol. Bacteria perform fermentation by converting carbohydrates into lactic acid.

“Fish” means fresh or saltwater finfish, crustaceans, and other forms of aquatic life (including alligator, frog, aquatic turtle, jellyfish, sea cucumber, and sea urchin and the roe of such animals) other than birds or mammals, and all mollusks, if such animal life is intended for human consumption.

“Food” means the same as defined in Iowa Code section 137D.1.

“Food contact surface” means a surface of equipment or utensil with which food normally comes into contact; or a surface of equipment or utensil from which food may drip, drain, or splash into a food or onto a surface normally in contact with food.

“Game animal” means an animal, the products of which are food, that is not classified as livestock, sheep, swine, goat, horse, mule, or other equine in 9 CFR 301.2 or as poultry or fish.

1. “Game animal” includes mammals, such as reindeer, elk, deer, antelope, water buffalo, bison, rabbit, squirrel, opossum, raccoon, nutria, or muskrat, and nonaquatic reptiles, such as land snakes.

2. “Game animal” does not include ratites.

“HACCP plan” means a written document that delineates the formal procedures for following the hazard analysis and critical control point principles developed by the National Advisory Committee on Microbiological Criteria for Foods.

“High-acid food” means a food that has an equilibrium pH of 4.60 or lower without the addition of an acid.

“Home food processing establishment” or *“establishment”* means the same as “home food processing establishment” as defined in Iowa Code section 137D.1.

“Homemade food item” means the same as defined in Iowa Code section 137D.1. Homemade food items do not include the following:

1. Unpasteurized fruit or vegetable juice;
2. Raw sprout seeds;
3. Foods containing game animals;
4. Fish or shellfish;
5. Alcoholic beverages;
6. Bottled water;
7. Packaged ice;

8. Consumable hemp products;
9. Food that will be further processed by a food processing plant or another home food processing establishment;
10. Time/temperature control for safety food packaged using a reduced oxygen packaging method;
11. Milk or milk products regulated under Iowa Code chapters 192 and 194;
12. Meat or meat food products, and poultry or poultry products regulated under Iowa Code chapter 189A, except for any of the following products when sold directly to the end consumer:
 - Poultry, poultry byproduct, or poultry food product if the producer raised the poultry pursuant to the exemption set forth in 9 CFR 381.10(c)(1) limiting the producer to slaughtering not more than one thousand poultry during the calendar year;
 - Poultry, poultry byproduct, or poultry food product if the poultry is from an inspected source exempted pursuant to 9 CFR 381.10(d); or
 - Meat, meat byproduct, or meat food product if the meat is from an inspected source exempted pursuant to 9 CFR 303.1(d); or
13. A raw agricultural commodity. Other than raw bean or seed sprouts, raw agricultural commodities do not require a license issued by the department to sell and may be sold by home food processing establishments, although they are not homemade food items.

“Low-acid canned food” means a thermally processed low-acid food packaged in a hermetically sealed container.

“Low-acid food” means any food, other than alcoholic beverages, with a pH greater than 4.60 and (a_w) greater than 0.85.

“Major food allergen” means milk, egg, fish, crustacean shellfish (such as crab, lobster, or shrimp), tree nuts (such as almonds, pecans, or walnuts), wheat, peanuts, soybeans, and sesame; or a food ingredient that contains protein derived from these foods.

“Packaged” means bottled, canned, cartoned, bagged, or wrapped. “Packaged” does not include wrapped or placed in a carry-out container to protect the food during service or delivery to the consumer, by a food employee, upon consumer request.

“pH” means the symbol for the negative logarithm of the hydrogen ion concentration, which is a measure of the degree of acidity or alkalinity of a solution. Values between 0 and 7 indicate acidity, and values between 7 and 14 indicate alkalinity. The value for pure distilled water is 7, which is considered neutral.

“Produce” means the same as defined in Iowa Code section 137D.1.

“Raw agricultural commodity” means the same as defined in 21 U.S.C. 321.

“Ready-to-eat food” means any food that is normally eaten in its raw state or any other food, including a processed food, for which it is reasonably foreseeable that the food will be eaten without further processing that would significantly minimize biological hazards.

“Recall” means an action taken when a food producer takes a product off the market because there is reason to believe the product may cause consumers to become ill.

“Reduced oxygen packaging” means reducing the amount of oxygen in a package by removing oxygen, displacing oxygen and replacing it with another gas or combination of gases, or otherwise controlling the oxygen content to a level below that normally found in the atmosphere (approximately 21 percent at sea level). Reduced oxygen packaging includes vacuum packaging, modified atmosphere packaging, controlled atmosphere packaging, cook chill packaging, and sous vide packaging.

“Shellfish”

1. “Crustacean shellfish” means crab, lobster and shrimp.

2. “Molluscan shellfish” means any edible species of oysters, clams, mussels, or scallops.

“Special dietary use food” includes a food that contains an artificial sweetener, except when specifically and solely used for achieving a physical characteristic in the food that cannot be achieved with sugar or other nutritive sweetener or a food that is used for the following:

1. Supplying particular dietary needs that exist by reason of a physical, physiological, pathological, or other condition including but not limited to the conditions of diseases, convalescence, pregnancy, lactation, allergic hypersensitivity to food, underweight, and overweight;

2. Supplying particular dietary needs that exist by reason of age including but not limited to infancy and childhood; or

3. Supplementing or fortifying the ordinary or usual diet with any vitamin, mineral, or other dietary property. Any such particular use of a food is a special dietary use, regardless of whether such food also purports to be or is represented for general use.

“Sprouts” means seeds or beans used to grow sprouts that are harvested with their seed or root intact.

“Standardized recipe” means a recipe that has been tried, adapted, and retried several times for use by a given food service operation and has been found to produce the same good results and yield every time when the exact procedures are followed with the same type of equipment and same quantity and quality of ingredients. At a minimum, a standardized recipe includes the recipe name, listing of each ingredient, a measurement of each ingredient, equipment and utensils used, preparation instructions, and procedures to ensure the safety of the food.

“Time/temperature control for safety” or *“TCS”* means a food that requires time and temperature control for safety to limit pathogenic microorganism growth or toxin formation. TCS food does not include foods that have an equilibrium pH less than 4.60 or (a_w) content below 0.85. Examples of TCS foods include:

1. Animal food that is raw or heat-treated.
2. Plant food that is heat-treated or consists of raw seed sprouts, cut melons, cut leafy greens, cut tomatoes, or garlic-in-oil mixtures.

“Traceback” means to determine and document the distribution and production chain and the source(s) of a product that has been implicated in a foodborne illness investigation.

481—34.2(137D) Licensing.

34.2(1) *Application for license.* A person shall not operate a home food processing establishment until a license has been obtained from the department or a contractor. Application for a license shall be made on a form furnished by the department containing the name of the business, name of the owner, physical address of the business, and list of all homemade food items the home food processing establishment intends to prepare. Applications for a license shall be completed using the department’s online application system at least 30 days prior to the anticipated opening of the home food processing establishment. If extenuating circumstances exist that prevent the applicant from completing the online application, paper applications are available from the department or a contractor.

34.2(2) *Homemade food item disclosure.* Homemade food items not listed on the application shall not be sold or distributed. New homemade food items may be added to an application at any time using the online application system or by submission of a paper form to the department or a contractor.

34.2(3) *Transferability.* A license is not transferable to a new owner or location. Any change in business ownership or business location requires a new license.

34.2(4) *Refunds.* License fees are refundable only if the license is surrendered to the department or a contractor prior to the effective date of the license. License fees are not refundable for a new home food processing establishment if a record review has occurred.

34.2(5) *Expiration and renewal.* A home food processing establishment license, unless sooner suspended or revoked, expires one year after the application for license is approved by the department or a contractor. A renewal should be submitted through the department’s online registration system with the required fee prior to expiration.

34.2(6) *Renewal 60 days or more after expiration.* A delinquent license will only be renewed if application for renewal is made within 60 days of expiration. If a delinquent license is not renewed within 60 days, an establishment shall apply for a new license and meet all of the requirements for an initial license. An establishment that has not renewed the license within 60 days of expiration will be closed by the department or a contractor.

34.2(7) *Documentation of gross sales.* The license holder shall maintain documentation of annual gross sales of homemade food items and provide it to the regulatory authority upon request. Documentation of gross sales includes at least one of the following and will be kept confidential:

- a. A copy of the establishment’s business tax return;

- b. Four quarters of gross sales of homemade food items;
- c. A letter from an independent tax preparer; or
- d. Other records documenting annual gross sales of homemade food items.

34.2(8) *Returned payments.* The department or a contractor will attempt to redeem a payment submitted for an establishment that is not honored by the bank on which it is drafted and will notify the applicant of the need to provide sufficient payment. An additional fee of \$25 will be assessed for each dishonored payment. If the department or a contractor does not receive payment, the establishment will be operating without a valid license.

481—34.3(137D) Physical facilities and equipment.

34.3(1) The floors, walls, ceilings, utensils, equipment, and supplies in the food processing and storage areas, and all vehicles used in the transportation of homemade food items, shall be maintained clean and in good repair.

34.3(2) Outer openings shall be protected by tight-fitting doors, windows, or screens.

34.3(3) Dogs, cats, or other pets and animals shall be excluded from entering food preparation areas when food is being processed or packaged.

34.3(4) Persons unnecessary to the production of homemade food items are not allowed in food processing areas while homemade food items are exposed or being produced.

34.3(5) Adequate lighting and ventilation shall be available in all areas where food is processed or stored.

34.3(6) An establishment shall have an adequate supply of hot and cold potable water under pressure from an approved and safe source. In addition:

- a. There shall be no direct or indirect connection of safe and unsafe water;
- b. If the residence is not served by a public water system, the water shall be tested at least annually for nitrates and coliforms;
- c. In the event a water test shows coliforms are present or nitrates are at an unsafe level, the establishment shall cease operations and notify the regulatory authority. The establishment will not resume operations until approved by the regulatory authority; and
- d. If the establishment's water source is under a water advisory indicating the water may be unsafe to consume, it shall not produce homemade food items until the advisory is lifted.

34.3(7) There shall be a conveniently located sink in each food processing area that is maintained clean and accessible for handwashing during production and packaging and supplied with hot and cold running water, hand soap, and sanitary towels.

34.3(8) An establishment shall have adequate equipment, such as a sink or dishwasher, to wash, rinse, and sanitize utensils.

34.3(9) There shall be conveniently located toilet facilities, equipped with a handwashing sink supplied with hot and cold running water, hand soap and sanitary towels or a hand-drying device.

34.3(10) All waste and waste water produced by the establishment shall be disposed of in a sanitary manner in compliance with applicable laws. If the home food processing establishment has a waste backup, it shall cease operation and notify the regulatory authority. It will not resume preparation of homemade food items until approved by the regulatory authority.

34.3(11) All garbage and refuse shall be kept in containers and removed from the premises regularly to eliminate insects and rodents, offensive odors, or other health hazards. Garbage and refuse containers shall be durable, easy to clean, insect- and rodent-resistant, and of material that neither leaks nor absorbs liquid.

34.3(12) Food processing and storage areas shall be free of pests. Pesticides, if used, shall be approved for use in commercial food establishments, clearly labeled, and used as directed by the manufacturer.

34.3(13) Hazardous chemicals or other toxic materials shall be stored, applied and used as directed by the manufacturer in a manner that protects food, equipment, and food contact surfaces from contamination.

34.3(14) Refrigeration and hot holding equipment design and capacity shall be adequate to maintain safe temperature control, including safe cooling temperatures, to prevent cross contamination and allergen cross contact and protect food from other sources of contamination. Dedicated refrigeration or hot holding equipment may be required if shared equipment is inadequate to maintain food safety.

34.3(15) All refrigeration and hot holding units shall be equipped with an accurate thermometer.

34.3(16) Appropriate thermometers shall be used to accurately measure the internal temperature of food during processing, holding, and storage.

34.3(17) All food contact surfaces shall be intended for use with food, made of safe materials, easy to clean, smooth, durable, nonabsorbent, and noncorrosive.

481—34.4(137D) Management and personnel.

34.4(1) *Person in charge.* There shall be a person in charge of operations during all hours of food processing who has a thorough understanding of food safety principles and is able to demonstrate control over food safety hazards, including:

- a. Time/temperature controls for cooking, hot holding, cooling, cold holding, and reheating foods;
- b. Cross contamination during storage and preparation;
- c. Major food allergens and allergen cross contact;
- d. Sanitation of food contact surfaces;
- e. Food handling, hygienic practices, and communicable diseases;
- f. Receiving and distribution; and
- g. If applicable, pH and (a_w).

34.4(2) *Food safety training.* The person in charge shall attend a food safety training course approved by the department and provide proof of attendance prior to the issuance of a home food processing establishment license.

34.4(3) *Exclusions from handling food.* A food handler shall be excluded from handling food, utensils, or packaging materials if the food handler:

- a. Is diagnosed with a communicable or contagious disease that can be transmitted through food;
- b. Has experienced diarrhea or vomiting in the past 24 hours;
- c. Is jaundiced;
- d. Has a sore throat with a fever; or
- e. Has exposed sores or infected wounds on the food handler's hands or arms.

34.4(4) *Hygienic practices.*

a. A food handler must keep the food handler's person and clothing clean and hair effectively restrained and wash the food handler's hands as often as necessary to protect food and food contact surfaces from contamination.

b. Ready-to-eat foods must not be handled with bare hands.

c. Eating, drinking, and use of tobacco is not permitted in food processing areas while homemade food items are exposed or being produced.

481—34.5(137D) Receiving, storage, and distribution.

34.5(1) *Receiving.* All foods and ingredients shall be obtained from an approved source and have been produced in compliance with applicable law. Honey from an unlicensed establishment and eggs from the establishment's own flock may be used in the preparation of homemade food items. All food shall be received in sound condition; at safe temperatures; free from spoilage, filth, or other contamination; unadulterated; and safe for human consumption.

34.5(2) *Storage.* Food storage areas shall be clean and located in an area that protects the food from contamination at all times. All food products shall be stored off of the floor. If removed from the original container, foods shall be stored in labeled and closed containers that are of a material that will not cause the food to become adulterated.

34.5(3) *Distribution.*

a. Foods containing raw or undercooked foods of animal origin will not be sold or distributed in a ready-to-eat form.

b. Foods produced in a home food processing establishment shall not be distributed for further processing by a food processing plant or another home food processing establishment.

c. Time/temperature control for safety homemade food items shall be maintained at safe temperatures during shipping and transportation to an end consumer, a mobile food unit, a farmers market food establishment, or a temporary food establishment operated by the same owner as the home food processing establishment.

d. Time/temperature control for safety homemade food items sold or distributed to other businesses for resale shall be maintained at or below 41°F during shipping and transportation.

e. No one may produce, distribute, offer for sale, or provide adulterated food to the public. Adulterated food shall be disposed of in a reasonable manner approved by the department.

481—34.6(137D) Food preparation and protection.

34.6(1) Food protection. Foods shall be processed, stored, and distributed in a manner that protects food from contamination, including cross contamination from the environment, and allergen cross contact.

34.6(2) Cooking. All animal foods or foods containing animal products, if cooked, shall be cooked to an internal temperature sufficient to destroy organisms that are injurious to health. Homemade food items shall not contain raw or undercooked animal foods except for packaged raw meat or poultry items labeled with safe handling instructions informing the consumer how to safely store, prepare, and handle raw meat and poultry products in the home.

34.6(3) Holding. All time/temperature control for safety foods shall be held at an internal temperature of 41°F or less or 135°F or higher to control bacterial growth or toxin formation.

34.6(4) Cooling.

a. Time/temperature control for safety foods that have been heat-treated shall be cooled from 135°F to 70°F within two hours and from 70°F to 41°F within an additional four hours. Total cooling time shall not exceed six hours.

b. Time/temperature control for safety foods prepared with ingredients above 41°F shall be cooled to 41°F or below within four hours from the beginning of preparation.

34.6(5) Reheating.

a. Homemade food items that are time/temperature control for safety and have been previously heated and cooled shall be reheated to an internal temperature of 165°F within two hours or less.

b. Commercially processed time/temperature control for safety foods shall be reheated to 135°F within two hours or less.

34.6(6) Preparation methods.

a. High-acid foods that are produced and sold by the establishment and that are controlled by pH, such as barbeque sauce, condiments, and dressings, may be produced as homemade food items if:

- (1) The product has been produced following a standardized recipe;
- (2) The product does not contain more than 10 percent low-acid food ingredients by weight;
- (3) The product recipe, including the name and weight of each ingredient, is submitted and approved by the regulatory authority;
- (4) The product's equilibrium pH of each batch is tested with a calibrated pH tester designed for use with food. The pH shall be below 4.60, and the pH value shall be recorded on a production or batch record; and

(5) The product is adequately heated to destroy spoilage organisms.

b. Dried foods that are produced and sold under the home food processing establishment license that are controlled by (a_w), such as dehydrated or freeze-dried food may be produced as a homemade food item if:

- (1) The products have been produced following a standardized recipe;
- (2) The homemade food items do not contain raw or undercooked foods of animal origin; and
- (3) Each batch is tested for (a_w) or the standardized written procedure for each homemade food item has been validated to ensure the final product is at or below 0.85 (a_w).

c. Jams, jellies, preserves, and fruit butters that are produced and sold under the home food processing establishment license shall meet the standard of identity specified in 21 CFR Part 150 and be produced following a standardized recipe. The home food processing establishment shall provide documentation, such as an analysis from an accredited food laboratory, that a product meets the standard of identity when requested by the regulatory authority.

d. Nonstandardized fruit jellies shall be produced following a standardized recipe and made with 45 parts of fruit to 55 parts of sugar and concentrated to 65 percent soluble solids. The home food processing establishment shall provide documentation, such as an analysis from an accredited food laboratory, that a product meets this requirement when requested by the regulatory authority.

e. Nonstandardized nonfruit jellies shall be produced following a standardized recipe and shall have a soluble solids content of 65 percent. The home food processing establishment shall provide documentation, such as an analysis from an accredited food laboratory, that a product meets this requirement when requested by the regulatory authority.

f. Standardized sweeteners and table syrups shall meet the standard of identity specified in 21 CFR Part 168. The home food processing establishment shall provide documentation that a product meets this requirement when requested by the regulatory authority.

g. A home food processing establishment that wishes to prepare foods using fermentation shall submit a HACCP plan to the department that has been validated by a recognized process authority, such as those provided on the department's website. A home food processing establishment shall not ferment food until the department has approved the HACCP plan.

h. A home food processing establishment shall not engage in the following processes to produce homemade food items:

- (1) Low-acid canning (e.g., canned vegetables);
- (2) Acidification to produce shelf-stable acidified foods (e.g., salsa, pickled vegetables, hot sauce);
- (3) Curing (e.g., bacon, jerky, meat sticks); or
- (4) Smoking food for preservation rather than flavor enhancement.

481—34.7(137D) Packaging and labeling requirements.

34.7(1) Legible labels. All required labeling information shall be legible and in a location that is easily identifiable by the consumer.

34.7(2) Labels and packaging on homemade food items, exception. A homemade food item shall be packaged in the home food processing establishment, and all required labeling shall be affixed to the homemade food item before it is delivered to the consumer, with the exception of a homemade food item picked up by the consumer in person at the home food processing establishment. In the case of the exception, the homemade food item shall still be protected from contamination and all required labeling information shall be provided to the consumer.

34.7(3) Raw meat and poultry products. Packaged homemade food items that contain raw meat or poultry shall be labeled with safe handling instructions informing the consumer how to safely store, prepare, and handle raw meat and poultry products in the home.

34.7(4) Expiration date. Refrigerated time/temperature control for safety homemade food items that are ready-to-eat foods shall be labeled with an expiration date not to exceed seven days from the date of preparation, and the date of preparation is counted as day one. Time/temperature control for safety homemade food items may be labeled with an expiration date that exceeds seven days if the expiration date has been determined to be safe by an accredited food science institution and documentation is provided to the regulatory authority upon request.

34.7(5) Contents.

a. Homemade food items will be identified as required by Iowa Code section 137D.2(7).

b. Labels or other marketing materials associated with homemade food items must be truthful and not misleading.

c. Claims on labels or other marketing materials associated with homemade food items that are related to the following must conform to the United States Food and Drug Administration's (FDA's)

Food Labeling Guide. A link to the labeling guide may be found on the department's website or on the FDA's website.

- (1) Health claims;
- (2) Qualified health claims;
- (3) Nutrient content claims (e.g., low sodium, high fiber, low fat, sugar free); or
- (4) Structure/function claims.

d. Homemade food items labeled or marketed as a special dietary use food will conform to 21 CFR Part 105. The home food processing establishment shall provide documentation, such as a nutritional analysis by an accredited food laboratory, to the regulatory authority upon request.

e. Labels or other marketing materials shall not contain any claims that the homemade food item can be used in the diagnosis, cure, mitigation, treatment, or prevention of disease.

481—34.8(137D) Sanitation.

34.8(1) There shall be sufficient means to clean, rinse, and sanitize all multi-use food contact surfaces. Cleaners and sanitizers used for these purposes shall be intended and approved for use in a commercial food establishment.

34.8(2) All food contact surfaces shall be clean to sight and touch when not in use.

34.8(3) All food contact surfaces shall be cleaned and sanitized:

- a.* Between each use;
- b.* At least every four hours if under continuous use to control microbial growth;
- c.* At a frequency necessary to prevent cross contamination; and
- d.* At a frequency necessary to prevent allergen cross contact.

34.8(4) If chemical sanitizers are used, they shall be used according to the manufacturer directions for use, and a means shall be provided for testing the proper level of chemical concentration, such as test strips designed specifically for the chemical being used.

34.8(5) Food processing, handling, and storage areas shall be neat; clean; and free from excessive accumulation of product, dust, trash, and unnecessary articles.

481—34.9(137D) Maintenance of records by licensee.

34.9(1) An establishment shall maintain standardized recipes for each homemade food item.

34.9(2) An establishment shall maintain production or batch records, including, at a minimum, product name, date of production, and date of packaging, with the exception of made-to-order food.

34.9(3) An establishment shall maintain records of foods received as ingredients, including, at a minimum, the name and address of the supplier, name of the ingredient, and date received. A receipt of purchase is a sufficient record if it contains all of the required information.

34.9(4) An establishment shall maintain distribution records of all homemade food items that are distributed for resale, including the product name, the name and address of the business where the homemade food items were distributed, the date distributed, the quantity distributed, and the date the homemade food item was produced.

34.9(5) An establishment not served by a public water system shall maintain records of annual water tests.

34.9(6) An establishment, if it produces homemade food items that require food safety parameters to be monitored throughout production, such as temperature, pH, or (a_w), shall use testing instruments as directed by the manufacturer and calibrated for accuracy according to the manufacturer's instructions. Monitoring results shall be documented as part of the batch record.

34.9(7) An establishment shall maintain all required records for a minimum of six months. All required records shall be made available for official review or copying upon request by the regulatory authority.

481—34.10(137D) Violations and enforcement.

34.10(1) All violations shall be corrected within a time frame not to exceed 90 days. The license holder shall make a written report to the regulatory authority, stating the action taken to correct the violation, within five days of correction.

34.10(2) An establishment that violates this chapter or Iowa Code chapter 137D is subject to a civil penalty as set forth in Iowa Code chapter 137D.

34.10(3) The department may employ various remedies in response to violations, including but not limited to civil penalty; suspending or revoking the license; injunction; or embargo, stop-sale, or recall orders.

481—34.11(137D) Denial, suspension, or revocation of license.

34.11(1) *Denial, suspension, or revocation of a license.* Denial, suspension, or revocation of a license is effective 30 days after mailing or personal service of the notice. The department may suspend or revoke a license as set forth in Iowa Code section 137D.8. A certified copy of a final order or judgment of conviction or plea of guilty is conclusive evidence of a conviction.

A deferred judgment, until discharged, is a conviction for purposes of this rule.

34.11(2) *Immediate suspension of license.* To the extent not inconsistent with Iowa Code chapters 17A and 137D and rules adopted pursuant to those chapters, the department or a contractor may immediately suspend a license in cases of an imminent health hazard, as defined by chapter 8 of the 2017 FDA Food Code (the “food code”). The procedures of Iowa Code section 17A.18A and chapter 8 of the food code shall be followed in cases of an imminent health hazard.

481—34.12(137D) Inspection and access to records.

34.12(1) Home food processing establishments will be periodically inspected based on a risk assessment basis, either in person or virtually using video technology.

34.12(2) The regulatory authority may enter a food processing establishment at any reasonable hour to make an inspection. The regulatory authority will inspect only those areas related to preparing or storing food for sale. The manager or person in charge of the establishment shall afford free access to records and every part of the premises where homemade food items and ingredients are stored or prepared and render all aid and assistance necessary to enable the regulatory authority to make a thorough and complete inspection.

481—34.13(137D) Public examination of records.

34.13(1) *Public information.* Information collected by the department and contractors is public information unless otherwise provided for by law. Records are stored in computer files and are not matched with any other data system. Inspection reports are available for public viewing at iowa.safefoodinspection.com.

34.13(2) *Confidential information.*

a. The following are examples of confidential records:

- (1) Trade secrets and proprietary information, including items such as formulations, standardized recipes, processes, policies and procedures, and customer lists;
 - (2) Health information related to foodborne illness complaints and outbreaks;
 - (3) The name or any identifying information of a person who files a complaint with the department;
- and
- (4) Other state or federal agencies’ records.

b. A party claiming that information submitted to the department contains trade secrets or proprietary information should clearly mark those portions of the submission as confidential/trade secret.

34.13(3) *Other agencies’ records.* Requests for records of other state or federal agencies will be referred to the appropriate agency.

481—34.14(137D) Appeals. An establishment may contest adverse action taken pursuant to this chapter by submitting a request for hearing to the department within 30 days of the mailing or service of the

department's action. Appeals and hearings are governed by 481—Chapter 9. For contractors, license holders shall have the opportunity for a hearing before the local board of health. If the hearing is conducted before the local board of health, the license holder may appeal to the department and shall follow the process for review in rule 481—9.3(10A,17A).

These rules are intended to implement Iowa Code chapter 137D.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 701—Chapter 201
“Sales and Use Tax Permits”

Iowa Code section(s) or chapter(s) authorizing rulemaking: 421.14, 423.25, 423.36, and 423.42
State or federal law(s) implemented by the rulemaking: Iowa Code sections 423.36, 252J.7, 423.2, 423.40, and 421.17

Public Hearing

A public hearing at which persons may present their views orally or in writing will be held as follows:

November 8, 2023
9 a.m. to 12 noon

Via video/conference call:
meet.google.com/msc-ekdk-xws
PH: 262.864.1688
PIN: 672 555 995#

Public Comment

Any interested person may submit written or oral comments concerning this Regulatory Analysis. Written or oral comments in response to this Regulatory Analysis must be received by the Department of Revenue no later than 4:30 p.m. on the date of the public hearing. Comments should be directed to:

Nick Behlke
Department of Revenue
Hoover State Office Building
P.O. Box 10457
Des Moines, Iowa 50306-3457
Phone: 515.336.9025
Email: nick.behlke@iowa.gov

Purpose and Summary

The purpose of this rulemaking is to rescind Chapter 201 and adopt a new Chapter 201 related to sales and use tax permits. Chapter 201 describes the requirements surrounding sales and use tax permits. The rules in this chapter are intended to help the public understand how to obtain a permit and what is required to obtain one.

The citation in 701—subrule 201.2(3) to 701—Chapter 19 refers to a chapter that will be adopted in a future rulemaking.

Analysis of Impact

1. Persons affected by the proposed rulemaking:

- Classes of persons that will bear the costs of the proposed rulemaking:

The proposed rulemaking does not create costs for any class of persons.

- Classes of persons that will benefit from the proposed rulemaking:

These rules help the public understand their obligations and common procedures related to obtaining and maintaining a sales and use tax permit. Any member of the public who has a sales and use tax permit or needs to obtain one will therefore benefit from this chapter.

2. Impact of the proposed rulemaking, economic or otherwise, including the nature and amount of all the different kinds of costs that would be incurred:

- Quantitative description of impact:

There is no known economic or other quantitative impact of this chapter. However, the guidance offered by this chapter likely encourages compliance with sales and use tax procedures.

- Qualitative description of impact:

The qualitative impact of this chapter is to provide guidance to sales and use tax permit holders.

3. Costs to the State:

- Implementation and enforcement costs borne by the agency or any other agency:

There are no costs to the State beyond what is already required to administer the relevant statutes.

- Anticipated effect on state revenues:

Because these rules describe procedures related to sales and use tax permits, the guidance contained in these rules will likely encourage compliance with state sales and use tax laws.

4. Comparison of the costs and benefits of the proposed rulemaking to the costs and benefits of inaction:

The cost of inaction would be failing to update the rules to remove language that is duplicative of statute and language that is unclear. The benefit would be providing guidance to the public about the Department's policies on sales and use tax permits.

5. Determination whether less costly methods or less intrusive methods exist for achieving the purpose of the proposed rulemaking:

The proposed rulemaking is not costly or intrusive. The purpose of the rules is to provide guidance on how to obtain a permit and how to remain in compliance with the requirements of holding a permit.

6. Alternative methods considered by the agency:

- Description of any alternative methods that were seriously considered by the agency:

The Department considered the possibility of not providing rules on these topics but determined that providing guidance on sales and use tax permits was necessary.

- Reasons why alternative methods were rejected in favor of the proposed rulemaking:

Proceeding without these rules would lead to confusion about the requirements to obtain a permit and to maintain a permit.

Small Business Impact

If the rulemaking will have a substantial impact on small business, include a discussion of whether it would be feasible and practicable to do any of the following to reduce the impact of the rulemaking on small business:

- Establish less stringent compliance or reporting requirements in the rulemaking for small business.
- Establish less stringent schedules or deadlines in the rulemaking for compliance or reporting requirements for small business.
- Consolidate or simplify the rulemaking's compliance or reporting requirements for small business.
- Establish performance standards to replace design or operational standards in the rulemaking for small business.
- Exempt small business from any or all requirements of the rulemaking.

If legal and feasible, how does the rulemaking use a method discussed above to reduce the substantial impact on small business?

There is no substantial impact on small business through this chapter. There is no difference in how these rules treat small businesses as opposed to other entities.

Text of Proposed Rulemaking

ITEM 1. Rescind 701—Chapter 201 and adopt the following new chapter in lieu thereof:

CHAPTER 201
SALES AND USE TAX PERMITS

701—201.1(423) Permit required.

201.1(1) *Permit requirement.* A person shall not make taxable sales of tangible property, specified digital products, or services until the person has received a permit from the department.

201.1(2) *Purchases subject to use tax.* A person liable for use tax under Iowa Code section 423.34 is required to file a sales and use tax return with the department, reporting and remitting use tax on all property or taxable service purchased for use in Iowa during the tax period covered by the return, unless the seller from whom the purchase is made is registered with the department and has collected sales or use tax on the purchase.

201.1(3) *Sales subject to use tax.* A remote seller as defined in rule 701—207.1(423) making sales into Iowa or sales of tangible personal property, specified digital products, or taxable services without meeting or exceeding the sales threshold as defined in rule 701—207.1(423) may register for a sales and use tax permit to collect use tax on such sales. The person collecting use tax on these sales shall report these sales as sales subject to use tax on the sales and use tax return. Rule 701—207.6(423) contains additional information about sales tax collection obligations for out-of-state persons.

201.1(4) *Infrequent purchases.* A person who does not regularly make purchases subject to use tax but needs to remit tax may use the Iowa non-permit use tax return available via GovConnectIowa or by other means as prescribed by the department. If a person owes less than \$1,200 per year in use tax, the person does not need to obtain a permit and may file the Iowa non-permit use tax return.

This rule is intended to implement Iowa Code section 423.36.

701—201.2(423) Application for permit.

201.2(1) *Permit application.*

a. An application for a sales and use tax permit shall be made via GovConnectIowa or by other means prescribed by the department, and the applicant shall furnish all information requested on such form. An application for a permit for a business operating under a trade name shall state the trade name, as well as the individual owner's name, in the case of a sole proprietorship by an individual, or the trade name and the name of all partners in the case of a partnership. The application shall state the date when the applicant will begin making taxable sales from the location for which the application is made.

b. There is no charge for a sales and use tax permit. If a person makes retail sales from more than one location, each location from which taxable sales of tangible personal property, specified digital products, or services will occur shall be required to hold a permit.

201.2(2) *Signatures required.*

a. Applications. The application shall be signed by the owner in the case of a sole proprietorship or a single-member LLC, or otherwise by an individual authorized to act on behalf of the business under rule 701—7.6(17A,22,421,422).

b. Electronic applications. For electronically transmitted applications, the signature must comply with rule 701—8.2(17A,421) unless more specified requirements are described on the form.

201.2(3) *Retroactive permits and returns for prior periods.* A person may indicate on a permit application that the effective date of the permit is in a prior tax period. Returns must be filed for all prior tax periods dating back to the effective date of the permit. Penalty and interest applies pursuant to Iowa Code sections 421.27 and 423.40. Submission of a retroactive permit application makes a person ineligible for a voluntary disclosure agreement for those prior tax periods and does not prohibit the department from enforcing provisions of Iowa Code section 423.40 if applicable. 701—Chapter 19 contains more information about the voluntary disclosure program.

201.2(4) *Address only required for retail sales locations.* If a person is subject to sales tax and has physical presence or economic presence and is not making sales exclusively through a marketplace facilitator, the person shall provide a location for its sales and use tax permit.

201.2(5) Seasonal filers. A seasonal business retailer with sales in up to four months during the calendar year may register to file a return and remit tax as a seasonal filer. The retailer will be expected to only file returns for the specific months in which the retailer conducts business as indicated by the retailer upon registration. The retailer will not be expected to file a return or remit tax for the other months of the year. Like any other retailer, the seasonal retailer must still notify the department when it ceases operation permanently; if it does not, it will receive a nonfiler notice from the department.

EXAMPLE: Retailer A plans to start selling Christmas trees annually starting in 2022. Retailer A only plans to sell trees in November and December each year. Retailer A may request to be designated as a seasonal filer such that it only is required to file returns for November and December each year. Retailer A fails to file a sales and use tax return for November 2029. Retailer A will receive a notice from the department even if Retailer A stopped selling trees after 2028.

This rule is intended to implement Iowa Code section 423.36.

701—201.3(423) Retailers selling nontaxable goods and services. Persons regularly engaged in selling tangible personal property or a specified digital product that is exempt from tax, making nontaxable transactions, or performing a service that is not enumerated in Iowa Code section 423.2 shall not be required to obtain a sales tax permit. However, if the retailer makes taxable sales or provides taxable services, the retailer will be required to hold a permit under the provisions of this chapter and Iowa Code section 423.36.

This rule is intended to implement Iowa Code section 423.36.

701—201.4(423) Obtaining a new permit after voluntarily canceling a prior permit. A person who previously held and canceled a permit who wishes to re-engage in business shall apply to the department for a new permit and file any previously unfiled tax returns. Upon receipt of the proper clearance for previous tax returns, a new permit may be issued if the relevant persons described in Iowa Code section 423.36 are not substantially delinquent in paying any tax due that is administered by the department.

This rule is intended to implement Iowa Code section 423.36.

701—201.5(423) Permit not transferable—sale of business. If a permit is held by a single-member LLC or a sole proprietor, the permit is not transferable. An entity that is not a single-member LLC or a sole proprietorship may, upon the sale of the business, transfer its permit to a new owner that is not a single-member LLC or a sole proprietorship.

This rule is intended to implement Iowa Code section 423.36.

701—201.6(423) Change of location. A business changing its location shall cancel its original permit and apply for a new permit. If a business does not have a stationary location, the business shall report its mailing address as its location.

This rule is intended to implement Iowa Code section 423.36.

701—201.7(423) Change of ownership or business organization.

201.7(1) Change of business entity. A retailer changing its business entity shall apply for a new permit under the name of the new entity. This includes but is not limited to such entity changes as proprietorship to partnership, partnership to corporation, or any combination thereof.

201.7(2) Change of ownership. A business that changes ownership shall cancel its permit and reapply with the new federal employer identification number (FEIN).

This rule is intended to implement Iowa Code section 423.36.

701—201.8(423) Change of legal or operating name of a business.

201.8(1) Change to legal name. A retailer changing its legal name but maintaining its ownership may continue to use its existing sales and use tax permit. The retailer shall notify the department of the change in legal name and shall provide any form of documentation requested by the department proving the change in name before the department will change the legal name for the permit.

201.8(2) *Change to operating name.* A retailer changing its operating, or “doing business as,” name may continue using its existing sales and use tax permit. The retailer shall notify the department of the change in operating name. The department may require any documentation to update the operating name associated with the permit.

This rule is intended to implement Iowa Code section 423.36.

701—201.9(423) Trustees, receivers, executors and administrators. By virtue of their appointment, trustees, receivers, executors and administrators who continue to operate, manage or control a business involving the sale of tangible personal property, specified digital products, or taxable services or engage in liquidating the assets of a business by means of sales made in the usual course of trade shall collect and remit tax on inventory and non-inventory items. A permit of a ward, decedent, cestui que trust, bankrupt, assignor or debtor for whom a receiver has been appointed, which is valid at the time a fiduciary relation is created, shall continue to be a valid permit for the fiduciary to continue the business for a reasonable time or to close out the business for the purpose of settling an estate or terminating or liquidating a trust or receivership.

This rule is intended to implement Iowa Code section 423.36.

701—201.10(423) Substantially delinquent tax—denial of permit.

201.10(1) *Substantial delinquency factors.* For purposes of Iowa Code section 423.36, the department will consider the following nonexclusive factors when considering whether an applicant is substantially delinquent in paying a tax such that a permit application will be denied:

1. The amount of tax delinquent.
2. The number of filing periods for which a tax remains due and unpaid.
3. The length of time a tax has been unpaid.
4. The amount of tax, interest, or penalty owed in relation to the applicant’s total financial resources.
5. Additional factors, which may be considered based on the specific facts and circumstances of each application.

201.10(2) *Child support noncompliance.* The department will deny a permit to any applicant or permittee, who is an individual, if the department has received a certificate of noncompliance from the child support recovery unit in regard to the individual, until the unit furnishes the department with a withdrawal of the certificate of noncompliance. The department will not deny a permit to any applicant that is an entity if the department has received a certificate of noncompliance from the child support recovery unit in regard to an individual that is an owner or officer of the entity.

This rule is intended to implement Iowa Code section 252J.7 and 423.36.

701—201.11(423) Substantially delinquent tax—revocation of permit.

201.11(1) *Substantial delinquency of tax.* The department may revoke a permit if the permit holder has become substantially delinquent in paying any tax that is administered by the department or the interest or penalty on the tax. The department will consider the nonexclusive factors set forth in subrule 201.10(1) to determine whether there is a substantial delinquency.

201.11(2) *Child support noncompliance.* The holder of a revoked permit will not be permitted to obtain a new permit if the department has received a certificate of noncompliance from the child support recovery unit in regard to the permit holder who is an individual requesting reinstatement, until the unit furnishes the department with a withdrawal of the certificate of noncompliance. The department will not revoke a permit from an entity if the department has received a certificate of noncompliance from the child support recovery unit in regard to an individual that is an owner or officer of the entity.

This rule is intended to implement Iowa Code section 423.36.

701—201.12(423) Obtaining a new permit after revocation.

201.12(1) If a taxpayer's permit is revoked, the taxpayer may apply for a new permit. The new permit application will be granted or denied based on terms and conditions set forth by the department. Terms and conditions include payment of any tax liability that may be due to the department.

201.12(2) Upon revocation of a sales and use tax permit, the taxpayer will be required to pay all delinquent tax liabilities, to file returns, and to refrain from taxable occurrences under Iowa Code section 423.2 prior to the issuance of a new sales tax permit, and the director may require the taxpayer to post a bond.

201.12(3) The director may impose a waiting period during which the person must refrain from taxable occurrences pursuant to the penalties of Iowa Code section 423.40, not to exceed 90 days, to issue a new permit after a revocation. The department may require a sworn affidavit, under penalty of perjury, stating that the person has fulfilled all requirements of said order of revocation and stating the dates on which the person refrained from taxable occurrences.

201.12(4) Each of the following situations will be considered one offense, for the purpose of determining the waiting period to reinstate a revoked permit or issue a new permit after a revocation, unless otherwise noted.

- a.* Failure to post a bond as required.
- b.* Failure to file a return timely.
- c.* Failure to pay tax timely (including dishonored checks, failure to pay, and late payments).
- d.* Failure to file a return and pay tax shown on the return timely (counts as two offenses).

201.12(5) The administrative law judge or director of revenue may order a waiting period after the revocation not to exceed:

- a.* Five days for one through five offenses.
- b.* Seven days for six through seven offenses.
- c.* Ten days for eight through nine offenses.
- d.* Thirty days for ten offenses or more.

201.12(6) The administrative law judge or director of revenue may order a waiting period not to exceed:

- a.* Forty-five days if the second revocation occurs within 24 months of the first revocation.
- b.* Sixty days if the second revocation occurs within 18 months of the first revocation.
- c.* Ninety days if the second revocation occurs within 12 months of the first revocation.
- d.* Ninety days if the third revocation occurs within 36 months of the second revocation.

201.12(7) A new permit will not be issued following revocation if the department has received a certificate of noncompliance from the child support recovery unit in regard to the permit holder until the unit furnishes the department with a withdrawal of the certificate of noncompliance. The department will not deny a permit to any applicant that is an entity if the department has received a certificate of noncompliance from the child support recovery unit in regard to an individual that is an owner or officer of the entity.

This rule is intended to implement Iowa Code sections 423.2, 423.36, and 423.40.

701—201.13(423) Administrative cancellation of permit. The department may cancel a permit upon verification by the department that the permit is no longer in use.

This rule is intended to implement Iowa Code section 421.17(37).

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 701—Chapter 202
“Filing Returns and Payment of Tax”

Iowa Code section(s) or chapter(s) authorizing rulemaking: 421.14, 422.68 and 423.42

State or federal law(s) implemented by the rulemaking: Iowa Code sections 421.9A, 421.26, 421.28, 423.1, 423.14, 423.22, 423.31, 423.32, 423.33, 423.36, 423.45 and 423.47

Public Hearing

A public hearing at which persons may present their views orally or in writing will be held as follows:

November 8, 2023
9 a.m. to 12 noon

Via video/conference call:
meet.google.com/msc-ekdk-xws
PH: 262.864.1688
PIN: 672 555 995#

Public Comment

Any interested person may submit written or oral comments concerning this Regulatory Analysis. Written or oral comments in response to this Regulatory Analysis must be received by the Department of Revenue no later than 4:30 p.m. on the date of the public hearing. Comments should be directed to:

Nick Behlke
Department of Revenue
Hoover State Office Building
P.O. Box 10457
Des Moines, Iowa 50306-3457
Phone: 515.336.9025
Email: nick.behlke@iowa.gov

Purpose and Summary

The purpose of this proposed rulemaking is to rescind Chapter 270 and adopt a new Chapter 270. The Department proposes revisions to the chapter to remove portions of the rules that the Department determined are obsolete, unnecessary, or duplicative of statutory language. The Department also proposes new language to provide additional clarity. The chapter describes the procedures for filing sales and use tax returns. The rules are intended to help the public understand the process for filing sales and use tax returns.

Analysis of Impact

1. Persons affected by the proposed rulemaking:

- Classes of persons that will bear the costs of the proposed rulemaking:

The proposed rulemaking does not create costs for any class of persons.

- Classes of persons that will benefit from the proposed rulemaking:

Anyone who is required to file a sales and use tax return will benefit from clarification on the procedures and requirements.

2. Impact of the proposed rulemaking, economic or otherwise, including the nature and amount of all the different kinds of costs that would be incurred:

- Quantitative description of impact:

There is no economic impact of the proposed rulemaking.

- Qualitative description of impact:

These proposed rules provide clarification on the procedures for filing sales and use tax returns. Failing to adopt them would lead to confusion, questions to the Department, and potential errors.

3. Costs to the State:

- Implementation and enforcement costs borne by the agency or any other agency:

There are no costs to the agency of implementing the proposed rules beyond those that would otherwise be required to administer the statute. The Department is required by law to establish forms and rules for the filing of returns. The Department must have processes in place to receive those returns and process the information on those returns.

- Anticipated effect on state revenues:

Having rules for the filing of returns allows the Department to more easily collect the proper amount of sales and use tax.

4. Comparison of the costs and benefits of the proposed rulemaking to the costs and benefits of inaction:

The Department is required by law to establish procedures for the filing of returns by rule. The cost of inaction would be confusion about how to file sales and use tax returns and inconsistent filing and administration as a result.

5. Determination whether less costly methods or less intrusive methods exist for achieving the purpose of the proposed rulemaking:

The proposed rulemaking is not costly or intrusive. The Department is required by law to establish forms and rules for the filing of returns.

6. Alternative methods considered by the agency:

- Description of any alternative methods that were seriously considered by the agency:

The Department did not seriously consider any alternatives because it is required by law to establish forms and rules for the filing of returns.

- Reasons why alternative methods were rejected in favor of the proposed rulemaking:

Failing to adopt these rules would leave the Department out of compliance with the statute. However, the Department did think carefully about the proposed rules and make revisions to remove language that was outdated, unnecessary, or obsolete.

Small Business Impact

If the rulemaking will have a substantial impact on small business, include a discussion of whether it would be feasible and practicable to do any of the following to reduce the impact of the rulemaking on small business:

- Establish less stringent compliance or reporting requirements in the rulemaking for small business.
- Establish less stringent schedules or deadlines in the rulemaking for compliance or reporting requirements for small business.
- Consolidate or simplify the rulemaking's compliance or reporting requirements for small business.
- Establish performance standards to replace design or operational standards in the rulemaking for small business.
- Exempt small business from any or all requirements of the rulemaking.

If legal and feasible, how does the rulemaking use a method discussed above to reduce the substantial impact on small business?

The proposed rulemaking does not have a substantial impact on small business. The rules do not make any special distinctions for small businesses beyond what is already contained in statute.

Text of Proposed Rulemaking

ITEM 1. Rescind 701—Chapter 202 and adopt the following new chapter in lieu thereof:

CHAPTER 202
FILING RETURNS AND PAYMENT OF TAX

701—202.1(423) Sales and use tax return filing.

202.1(1) *In general.* A retailer owing \$1,200 or more in sales or use tax per calendar year shall file a sales and use tax return once per month. This monthly return is due on or before the last day of the month following the end of the month in which the tax was collected. A retailer owing less than \$1,200 in sales or use tax per calendar year shall file a sales and use tax return at least once per annual year, due on or before January 31 for the prior calendar year. A retailer otherwise expected to file a return annually may file a return on a monthly basis if the retailer prefers to do so. Every return shall be signed and dated.

202.1(2) *New retailers.* A retailer who has never held an Iowa sales or use tax permit and has never collected or accrued sales or use tax in Iowa shall indicate at the time the retailer registers for its permit whether it expects to file a return monthly or annually.

202.1(3) *Changes to filing frequency.* A retailer registered to file an annual sales and use tax return should update its return filing frequency as needed. The department may adjust a retailer's filing frequency if the retailer has remitted \$1,200 or more in its first year of operation in Iowa and the department has notified the retailer that it meets or exceeds the filing threshold.

202.1(4) *Calculating the \$1,200 filing frequency threshold.* The threshold for determining whether a retailer should file a monthly or an annual sales and use tax return shall be calculated by adding sales and use taxes due in a calendar year. Other excise taxes should not be included in the calculation, even though they may be reported on the sales and use tax return.

202.1(5) *Electronic filing requirement and exception.* Retailers required to file a monthly sales and use tax return shall file the return through GovConnectIowa. A retailer who is unable to file a return electronically may request permission from the director to file a paper return. A retailer requesting such permission shall provide proof of its inability to file electronically.

202.1(6) *Simplified electronic return due date.* A retailer registered to collect Iowa tax through the Streamlined Sales Tax Registration System shall file a simplified electronic return on or before the twentieth day of each month following the end of the month in which the tax was collected. Any other retailer using the simplified electronic return shall file the return on or before the last day of the month following the end of the month in which the tax was collected.

This rule is intended to implement Iowa Code section 423.31.

701—202.2(423) Reporting sales or use taxes. A taxpayer with a reporting obligation for either sales tax or use tax but not both shall affirmatively indicate on the sales and use tax return that the taxpayer has no tax to report for the appropriate tax type. A taxpayer does this by making the appropriate indication on an electronic return or by entering a zero on the taxable amount line in the tax section of a paper return for which the taxpayer does not have tax to report. A taxpayer who fails to do so will be treated as not reporting for that tax type.

This rule is intended to implement Iowa Code section 423.31.

701—202.3(423) Sales and use tax remittance. Sales or use tax owed by a retailer shall accompany the sales and use tax return for the period in which the tax became due. Retailers filing a monthly sales and use tax return electronically shall remit tax electronically. Retailers filing a paper return may remit tax by mail, payable to the Iowa Department of Revenue. Remittances transmitted electronically are considered to have been made on the date the remittance is completed in GovConnectIowa.

This rule is intended to implement Iowa Code section 423.31.

701—202.4(423) Due dates, weekends, and holidays. Due dates that fall on a Saturday, Sunday, or holiday shall be treated in accordance with Iowa Code section 421.9A. Iowa Code section 421.9A contains a definition of “holiday.”

This rule is intended to implement Iowa Code section 421.9A.

701—202.5(423) Consolidated returns. Two types of permit holders have the option of filing a consolidated return. The first is a permit holder with multiple locations from which taxable sales are made, and the second is certain affiliated corporations.

202.5(1) *Permit holders with multiple locations.* A permit holder procuring more than one permit may file a separate return for each permit or, if a request to consolidate pursuant to Iowa Code section 423.31(4) has been approved by the department, the permit holder may file one consolidated return reporting sales made at all locations for which a permit is held.

202.5(2) *Affiliated corporations.* Any group consisting of a parent corporation and its affiliates, which is entitled to file a consolidated return for federal income tax purposes and which makes retail sales of tangible personal property, specified digital products, or taxable services, may make an application to the director for permission to file a consolidated Iowa sales tax return. The application shall:

- a. Be in writing.
- b. Be signed by an officer of the parent company.
- c. Contain the business name, address, federal identification number, and Iowa sales and use tax permit number of every corporation seeking the right to file a consolidated return.
- d. State the initial tax period for which the right to file a consolidated return is sought.
- e. Be filed no later than 90 days prior to the beginning of the identified initial tax period.
- f. Contain any additional relevant information that the director may, in individual instances, require.

202.5(3) *Requirements common to returns filed under this rule.* The following provisions apply to permit holders filing consolidated returns pursuant to either subrule 202.5(1) or 202.5(2):

- a. *Proper form.* Taxpayers shall file consolidated returns through GovConnectIowa.
- b. *Working papers.* All working papers used in the preparation of the information required to complete the returns must be available for examination by the department.
- c. *Offsetting collections among affiliates.* Undercollections of sales tax at one or more locations or by one or more affiliates shall not be offset by overcollections at other locations or by other affiliates.

This rule is intended to implement Iowa Code section 423.31.

701—202.6(423) Direct pay permits and negotiated rate agreements.

202.6(1) *Direct pay permits in general.* Qualified purchasers, users, and consumers of tangible personal property, specified digital products, or taxable services pursuant to Iowa Code chapter 423 may remit tax owed directly to the department instead of having the tax collected and remitted by the seller. A qualified purchaser, user, or consumer shall not be granted or exercise this direct pay option except upon proper application to the department and only after issuance of the direct pay permit by the director of the department or personnel authorized by the director.

a. *Qualifications for a direct pay permit.* To qualify for a direct pay permit, an applicant will meet all of the following criteria:

- (1) Be a purchaser, user, or consumer of tangible personal property, specified digital products, or taxable services.
- (2) Have an accrual of sales and use tax liability of more than \$8,000 in a month. A purchaser, user, or consumer may have more than one business location and can combine the sales and use tax liabilities on consumed goods of all locations to meet the requirement of \$8,000 in sales and use tax liability in a month to qualify if the records are located in a centralized location. If a purchaser, user, or consumer is combining more than one location, only one direct pay tax return for all of the combined locations needs to be filed with the department. However, local option sales tax should not be included in the tax base for determining qualification for a direct pay permit. If a purchaser, user, or consumer has more than one

location, but not all locations wish to remit under a direct pay permit, the purchaser, user, or consumer will need to indicate which locations will be utilizing the direct pay permit at the time of application.

(3) Remit tax and file returns pursuant to Iowa Code section 423.36. Paragraph 202.6(1)“d” contains further details.

b. Nonqualifying purchases or uses. The granting of a direct pay permit is not allowed for any of the imposed taxes listed in Iowa Code section 423.36(9)“b.”

c. Application and permit information. To obtain a direct pay permit, a purchaser, user, or consumer will fully and properly complete an application form prescribed by the director and provide certification that the purchaser, user, or consumer has paid sales and use tax to the department or vendors over the last two years prior to application, an average of \$8,000 in a month. Upon approval, the director or personnel authorized by the director will issue a direct pay permit to qualifying applicants. The direct pay permit will contain direct pay permit identifying information, including a direct pay permit identification number. The direct pay permit should be retained by the permit holder. When purchasing from a vendor, a permit holder should give the vendor a certificate of exemption containing the information as set forth in rule 701—288.3(423).

d. Remittance and reporting. Direct pay permit holders shall remit and report sales, use, and local option sales tax on a monthly basis. Remittance of tax due under a direct pay permit will begin with the first month after the direct pay permit is issued to the holder. The tax to be paid under a direct pay permit shall be remitted directly to the department by electronic funds transfer (EFT) only. A permit holder need not have remitted by EFT prior to obtaining a direct pay permit to qualify for such a permit. However, a permit holder must remit taxes due by EFT for transactions entered into on or after the date the permit is issued. All local option sales tax due must be reported and remitted at the same time as the sales and use taxes due under the direct pay permit for the corresponding tax period. However, local option sales tax should not be included in the tax base for determining qualification for a direct pay permit or frequency of remittance. Reports should be filed with the department on a monthly basis. The director may, when necessary and advisable in order to secure the collection of tax due, require an applicant for a direct pay permit or a permit holder to file with the director a qualified surety bond as set forth in Iowa Code section 423.35. A permit holder who fails to report or remit any tax when due is subject to the penalty and interest provisions set forth in Iowa Code section 421.27.

e. Permit revocation and nontransferability. A direct pay permit may be used indefinitely unless it is revoked by the department. A direct pay permit is not transferable and cannot be assigned to a third party. The department may revoke a direct pay permit at any time the permit holder fails to meet the requirements for a direct pay permit, misuses the direct pay permit, or fails to comply with the provisions in Iowa Code section 423.36(9). If a direct pay permit is revoked, it is the responsibility of the prior holder of the permit to inform all vendors of the revocation so the vendors may begin to collect tax at the time of purchase. A prior permit holder is responsible for any tax, penalty, and interest due for failure to notify a vendor of revocation of a direct pay permit.

f. Record-keeping requirements. The parties involved in transactions involving a direct pay permit shall have the following record-keeping duties:

(1) Permit holder. The holder of a direct pay permit will retain possession of the direct pay permit and keep a record of all transactions made pursuant to the direct pay permit in compliance with rule 701—11.4(423).

(2) Vendor. A vendor will retain a valid exemption certificate under rule 701—288.3(423) that is received from the direct pay permit holder and retain records of all transactions engaged in with the permit holder in which tax was not collected, in compliance with rule 701—11.4(423). A vendor’s liability for uncollected tax is governed by the liability provisions of a seller under an exemption certificate set forth in rule 701—288.3(423).

202.6(2) Negotiated rate agreements.

a. In general. Any person who has been issued or who has applied for a direct pay permit may request the department to enter into a negotiated rate agreement with the permit holder or applicant. These agreements are negotiated on a case-by-case basis and, if approved by the department, allow a direct pay permit holder to pay the state sales, local option sales, or use tax on a basis calculated by

agreement between the direct pay permit holder and the department. Negotiated rate agreements are not applicable to sales and use taxes set out in paragraph 202.6(1) “b,” and no negotiated rate agreement is effective for any period during which a taxpayer who is a signatory to the agreement is not a direct pay permit holder.

b. Required information. All negotiated rate agreements shall contain the following information or an explanation for its omission:

- (1) The name of the taxpayer who has entered into the agreement with the department.
- (2) The name and title of each person signing the agreement and the name, telephone or fax number, and email or physical address of at least one person to be contacted if questions regarding the agreement arise.
- (3) The period during which the agreement is in effect, the renewal or extension rights (if any) of each party, and the effective date of the agreement.
- (4) The negotiated rate or rates, the classes of sales or uses to which each separate rate is applicable, any items that will be excluded from the agreement, and any circumstances that will result in a changed rate or rates or changed composition of classes to which rates are applicable.
- (5) Actions or circumstances that render the agreement void, or voidable at the option of either party, and the time frame in which the agreement will be voided.
- (6) Rights, if any, of the parties to resort to mediation or arbitration.
- (7) An explanation of the department’s right to audit aspects of the agreement, including any right to audit remaining after the agreement’s termination.
- (8) The conditions by which the agreement may be terminated and the effective date of the termination.
- (9) The methodology used to determine the negotiated rate and any schedules needed to verify percentages.
- (10) Any other matter deemed necessary to the parties’ mutual understanding of the agreement.

This rule is intended to implement Iowa Code section 423.36.

701—202.7(423) Regular permit holders responsible for collection of tax. A permit holder may operate by selling merchandise by trucks, canvassers, or itinerant salespeople over fixed routes within the county in which the permanent place of business is located or other counties in this state. When this occurs, the permit holder is liable for reporting and paying tax on these sales. The person doing the selling for the permit holder shall be required to have a form, either in possession or in the vehicle, that authorizes that person to collect tax. This form is obtained from the department and shall contain the name, address, and permit number of the retailer according to the records of the department.

This rule is intended to implement Iowa Code sections 423.14 and 423.36.

701—202.8(423) Sale of business.

202.8(1) Final return due. A retailer selling the business shall file a return within the succeeding month and pay all tax due. Any unpaid tax shall be due prior to the transfer of title of any personal property to the purchaser, and the tax becomes delinquent one month after the sale.

202.8(2) Record retention. A retailer discontinuing business shall maintain the business’s records for a period of five years from the date of discontinuing the business unless a release from this provision is given by the department. 701—subrule 285.28(2) provides for possible sales and use tax consequences relating to the sale of a business.

This rule is intended to implement Iowa Code section 423.33.

701—202.9(423) Bankruptcy, insolvency, or assignment for benefit of creditors. In cases of bankruptcy, insolvency or assignment for the benefit of creditors by the taxpayer, the taxpayer shall immediately file a return with the tax being due.

This rule is intended to implement Iowa Code section 423.31.

701—202.10(423) Vending machines and other coin-operated devices. An operator who places machines on location shall file a return that includes the sales price from sales from all machines or devices operated by the retailer in Iowa during the tax period covered by the return. The mandatory beverage container deposit required under the provisions of Iowa Code chapter 455C shall not be considered part of the sales price.

This rule is intended to implement Iowa Code sections 423.1 and 423.2.

701—202.11(423) Claim for refund of tax.

202.11(1) Eligibility for refund; filing claims. Refunds of tax shall be made only to those who have actually paid the tax. A person or persons may designate the retailer who collects the tax as an agent for purposes of receiving a refund of tax. A person or persons who claim a refund shall prepare and file the claim on Form IA 843, Refund Return, with the department, stating in detail the reasons and facts and, if necessary, supporting documents for which the claim for refund is based.

202.11(2) Denial of refund claim—appeal. If the claim for refund is denied, and the person wishes to appeal the denial, the department will consider an appeal to be timely if filed no later than 60 days following the date of denial. Rule 701—7.9(17A) contains more information on appeals.

202.11(3) Request for abeyance. When a person is in a position of believing that the tax, penalty, or interest paid or to be paid will be found not to be due at some later date, then in order to prevent the statute of limitations from running out, a claim for refund or credit must be filed with the department within the statutory period provided for in Iowa Code section 423.47. The claim must be filed requesting that it be held in abeyance pending the outcome of any action that will have a direct effect on the tax, penalty, or interest involved. Nonexclusive examples of such action would be court decisions, departmental orders and rulings, and commerce commission decisions.

EXAMPLE 1: X, an Iowa sales tax permit holder, is audited by the department for the period from July 1, 2014, to June 30, 2017. A \$10,000 tax, penalty, and interest liability is assessed on materials the department determines are not used in processing. X does not agree with the department's position but still pays the full liability even though X is aware of pending litigation involving the materials taxed in the audit.

Y is audited for the same period involving identical materials used to those taxed in the audit of X. However, Y, rather than paying the assessment, takes the department through litigation and wins. The final litigation is not completed until September 30, 2023.

X, on October 1, 2023, upon finding out about the decision of Y's case, files a claim for refund relating to its audit completed in June 2017. The claim will be totally denied as beyond the three-year statute of limitations. However, if X had filed a claim along with payment of its audit in June 2017, and requested that the claim be held in abeyance pending Y's litigation, then X would have received a full refund of its audit liability if the decision in Y's case was also applicable to X.

EXAMPLE 2: X is audited by the department for the period from July 1, 2015, to June 30, 2018, and assessed July 31, 2018. X pays the assessment on December 31, 2018. No protest was filed, and no claim for refund or credit was filed requesting it be held in abeyance. On January 31, 2020, X files a claim for refund relating to the entire audit. The claim is based on a recent court decision that makes the tax liability paid by X now refundable. However, only the tax paid from January 1, 2017, through June 30, 2018, will be allowed since this is the only portion within the three-year statute of limitations set forth in Iowa Code section 423.47. If the claim had been filed on or before December 31, 2019, then the entire audit period could have been considered for refund since the claim would have been filed within one year of payment.

202.11(4) Refund of use tax. A taxpayer will need to file an amended return in order to claim a refund of use tax. A taxpayer cannot use Form IA 843, Refund Return, to claim this refund.

This rule is intended to implement Iowa Code sections 423.45 and 423.47.

701—202.12(423) Immediate successor liability for unpaid tax. To ensure all sales or use tax due is paid, Iowa Code section 423.33(2) applies to a retailer selling the retailer's business or stock of goods

or ceasing the retailer's business and the immediate successor. For the purpose of this rule, "retailer" includes all persons liable for tax under Iowa Code sections 421.26 and 423.33.

202.12(1) Immediate successors having a duty to withhold.

a. An immediate successor who, pursuant to a contract of sale, pays a purchase price to a retailer in return for the transfer of a going business or a stock of goods is obligated to inquire if tax, penalty, or interest is due and to withhold a portion of the purchase price to pay the delinquent tax, penalty, or interest, if necessary. "Immediate successor" includes but is not limited to the following examples:

(1) An entity resulting from the action of a sole proprietor who organizes a business in which the sole proprietor is the only or the controlling stakeholder.

(2) A sole proprietorship established from an entity of which the sole proprietor was the exclusive, majority, or controlling stakeholder.

b. Reserved.

202.12(2) More than one immediate successor. If a retailer sells a business or stock of goods to two or more persons, the following requirements apply:

a. Sale to two or more persons. If a retailer sells a substantial portion of the business or the retail business's stock of goods to another person who will in turn offer those goods for sale in a retail business, that person or persons are immediate successors that are jointly and severally liable.

b. Purchase of differing places of business. If one retailer owns two or more places of business, each having a separate sales tax permit, each location having its own permit is a separate business and has a separate stock of goods for the purpose of determining successor liability. A person purchasing the business at one location or the stock of goods from one location would be personally liable only for the tax owed under the permit assigned to that location.

202.12(3) Sale of a retailer's business. Usually, the sale of only the machinery or equipment used in a business without the sale or leasing of the realty of the business is not a sale of the business itself. The transfer of a retailer's machinery or equipment and business realty to a person who continues to use the machinery, equipment, and realty for the sale of any type of tangible personal property or specified digital products constitutes the selling of the retailer's business, and the person to whom the business is sold is an immediate successor and liable for tax.

EXAMPLE: A is a furniture dealer. A sells the stock of goods (the furniture offered for sale) to B. A then sells the furniture store (business realty) to C. A also sells C the office equipment and all other tangible personal property and specified digital products used in the operation of the furniture store except for the stock of goods (furniture). C then uses the purchased store and the office equipment in the operation of a sporting goods store. B takes the furniture purchased from A to B's furniture store where it is sold. A owed the department \$7,000 in sales tax. Both B and C are immediate successors to A and personally liable for the sales tax.

202.12(4) Good faith. An immediate successor to a licensee's, retailer's, or seller's business or stock of goods has purchased the licensee's, retailer's, or seller's business or stock of goods in good faith that no delinquent tax, interest, or penalty was due and unpaid if the immediate successor demonstrates, by suitable evidence, that one of the following situations exists.

a. The department has provided the immediate successor with a certified statement that no delinquent tax, interest, or penalty is unpaid. Immediate successors shall not rely upon oral statements from department personnel that no tax, interest, or penalty is unpaid. An immediate successor may request a certified statement from the department on forms provided by the department.

(1) Prior to issuing a certified statement, the department may contact both the immediate successor and the licensee, retailer, or seller regarding the request for a certified statement from the department.

(2) A certified statement provided by the department will be recognized by the department as valid as of the issuance of the statement.

(3) A certified statement provided by the department is the preferred evidence that a purchase of a business or stock of goods was made in good faith and that no delinquent tax, interest, or penalty was due and paid.

b. The immediate successor has taken in good faith a certified statement from the licensee, retailer, or seller that no delinquent tax, interest, or penalty is unpaid as of the date of purchase.

(1) A “certified statement” from a licensee, retailer, or seller is a statement the truth of which is attested to before a notary public. A certified statement from a licensee, retailer, or seller will not be recognized by the department as valid unless it includes all of the following:

1. The name of the business being purchased or a description of the stock of goods being purchased.
2. The names of the licensee, retailer, or seller and the prospective purchaser(s).
3. The tax identification numbers of both the licensee, retailer, or seller and prospective purchaser(s). Entities shall include a federal employer identification number (FEIN). Individuals shall include a social security number (SSN) or individual tax identification number (ITIN).
4. An attestation signed by the licensee, retailer, or seller attesting that no delinquent tax, interest, or penalty of the retailer is unpaid as of the date of the closing of the sale.

(2) A certified statement has been taken from a licensee, retailer, or seller “in good faith” if the immediate successor, in the exercise of due diligence, had no reason to believe a retailer’s statement was false or no reason to question the truth of the retailer’s statement.

This rule is intended to implement Iowa Code sections 421.28 and 423.33.

701—202.13(423) Officers and partners—personal liability for unpaid tax. If a retailer or purchaser fails to pay sales tax when due, any officer of a corporation or association, or any partner of a partnership, who has control of, supervision of, or the authority for remitting the sales tax payments and has a substantial legal or equitable interest in the ownership of the corporation or partnership is personally liable for payment of the tax, interest, and penalty if the failure to pay the tax is intentional. This personal liability is not applicable to sales tax due and unpaid on accounts receivable. The dissolution of a corporation, association, or partnership does not discharge a responsible person’s liability for failure to pay tax.

202.13(1) *Personal liability—how determined.* There are various criteria that can be used to determine which officers of a corporation have control of, supervision of, or the authority for remitting tax payments. Some criteria are:

- a. The duties of officers as outlined in the corporate bylaws.
- b. The duties that various officers have assumed in practice.
- c. Which officers are empowered to sign checks for the corporation.
- d. Which officers hire and fire employees.
- e. Which officers control the financial affairs of the corporation.

(1) An officer in control of the financial affairs of a corporation may be characterized as one who has final control as to which of the corporation’s bills should or should not be paid and when bills that had been selected for payment will be paid.

(2) “Final control” means a significant control over which bills should or should not be paid, rather than exclusive control.

(3) The observations in paragraph 202.13(1)“e” are applicable to partnerships as well as corporations.

202.13(2) *“Accounts receivable” described.* Officers and partners are not responsible for sales tax due and owing on accounts receivable. An “account receivable” is a contractual obligation owing upon an open account. An “open account” is one that is neither finally settled nor finally closed but is still running and open to future payments or the assumption of future additional liabilities. The ordinary consumer installment contract is not an account receivable. The amount due has been finally settled and is not open to future adjustment. The usual consumer installment contract is a “note receivable” rather than an account receivable. An account receivable purchased by a factor or paid by a credit card company is, as of the date of purchase or payment, not an account receivable. An officer or partner will be liable for the value of the account receivable purchased or paid. Officers and partners have the burden of proving that tax is not due because it is a tax on an account receivable.

This rule is intended to implement Iowa Code section 421.26.

701—202.14(423) Sales tax or use tax paid to another state.

202.14(1) *Equal or greater tax paid to another state.* When a person has already paid to any other state of the United States a state sales, use, or occupational tax on specifically identified tangible personal property or taxable services on its sale or use, prior to bringing the property into Iowa, and the tax is equal to or greater than the current rate of tax imposed by the Iowa use tax law, no additional use tax is due to the state of Iowa by such person.

202.14(2) *Less tax paid to another state.* If the amount of tax already paid by such person to any other state of the United States on specifically identified tangible personal property or taxable services prior to bringing the property into Iowa is less than the current rate of tax imposed by Iowa law, use tax shall be due to the state of Iowa on the difference in tax paid to the foreign state and the tax due under the Iowa law.

202.14(3) *Claiming exemption for tax paid.* When a person claims exemption from payment of use tax on the grounds that the tax has already been paid to any other state of the United States with respect to the sale or use of the property or service in question prior to bringing the property into Iowa, the burden of proof is upon that person to show the department, county treasurer, or motor vehicle division of the Iowa department of transportation, by document, that the tax has been paid.

202.14(4) *Credit not allowed against Iowa tax.* Credits shall not be allowed for sales, use, or occupational tax already paid in any state of the United States against the Iowa use tax relating to the acquisition cost of property being brought into this state when such tax already paid was paid on the sales price of lease or rental payments of tangible personal property used in another state.

This rule is intended to implement Iowa Code section 423.22.

701—202.15(423) Registered retailers selling tangible personal property on a conditional sale contract basis. A retailer shall report and remit to the department the full amount of tax computed on the full sale price on the return for the tax period during which the sale was made.

This rule is intended to implement Iowa Code sections 423.1 and 423.2.

701—202.16(423) Registered vendors repossessing goods sold on a conditional sale contract basis. A registered retailer repossessing tangible personal property that has been sold on a conditional sale contract basis and remitting use tax to the department on the full purchase price may take a deduction on the retailer's sales and use tax return for the tax period in which the goods were repossessed, in an amount equal to the credit allowed to the purchaser for the goods returned, if the retailer has returned use tax to the purchaser on the unpaid balance.

This rule is intended to implement Iowa Code sections 423.1 and 423.2.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 701—Chapter 207
“Remote Sales and Marketplace Sales”

Iowa Code section(s) or chapter(s) authorizing rulemaking: 421.14, 422.68, and 423.42
State or federal law(s) implemented by the rulemaking: Iowa Code section 423.14A

Public Hearing

A public hearing at which persons may present their views orally or in writing will be held as follows:

November 8, 2023
9 a.m. to 12 noon

Via video/conference call:
meet.google.com/msc-ekdk-xws
PH: 262.864.1688
PIN: 672 555 995#

Public Comment

Any interested person may submit written or oral comments concerning this Regulatory Analysis. Written or oral comments in response to this Regulatory Analysis must be received by the Department of Revenue no later than 4:30 p.m. on the date of the public hearing. Comments should be directed to:

Nick Behlke
Department of Revenue
Hoover State Office Building
P.O. Box 10457
Des Moines, Iowa 50306-3457
Phone: 515.336.9025
Email: nick.behlke@iowa.gov

Purpose and Summary

The purpose of this proposed rulemaking is to rescind Chapter 207 and adopt new Chapter 207 with a few revisions to remove unnecessary restrictive terms and provide additional clarity. These rules describe the Department’s interpretation of the underlying statute to help the public understand requirements for remote and marketplace sellers. These rules reduce uncertainty about who must collect and remit Iowa sales tax. Citations to rule 701—213.10(423) in rule 701—207.11(423) refer to a rule that will be adopted in a future rulemaking.

Analysis of Impact

1. Persons affected by the proposed rulemaking:
 - Classes of persons that will bear the costs of the proposed rulemaking:
The proposed rules do not create costs for any class of persons.
 - Classes of persons that will benefit from the proposed rulemaking:
The public will benefit from clarity on the collection obligations of remote and marketplace sellers and the limitations of exemptions.
2. Impact of the proposed rulemaking, economic or otherwise, including the nature and amount of all the different kinds of costs that would be incurred:
 - Quantitative description of impact:
There is no economic impact from the proposed rules.
 - Qualitative description of impact:

The proposed rules reduce uncertainty about the collection obligations of remote and marketplace sellers. Failing to adopt them would lead to confusion, questions to the Department, and potential collection errors.

3. Costs to the State:

- Implementation and enforcement costs borne by the agency or any other agency:

There are no costs to the Department related to implementing the proposed rules beyond those that would otherwise be required to administer the statute.

- Anticipated effect on state revenues:

There is no anticipated effect on state revenues. However, the proposed rules clarify the collection responsibilities of remote and marketplace sellers, making it more likely that the correct amount of tax will be collected.

4. Comparison of the costs and benefits of the proposed rulemaking to the costs and benefits of inaction:

There are no costs related to the proposed rules. The benefit of the rules is to provide clarity on the collection responsibilities of remote and marketplace sellers.

5. Determination whether less costly methods or less intrusive methods exist for achieving the purpose of the proposed rulemaking:

The proposed rulemaking is not costly or intrusive. The purpose of the rules is to provide clarification on the collection requirements for remote and marketplace sellers.

6. Alternative methods considered by the agency:

- Description of any alternative methods that were seriously considered by the agency:

The Department considered the possibility of not providing rules on this topic but determined that the proposed rules provide useful guidance to the public beyond what is provided by the statutes.

- Reasons why alternative methods were rejected in favor of the proposed rulemaking:

Proceeding without these proposed rules would lead to confusion about the tax collections and remittance obligations of remote and marketplace sellers.

Small Business Impact

If the rulemaking will have a substantial impact on small business, include a discussion of whether it would be feasible and practicable to do any of the following to reduce the impact of the rulemaking on small business:

- Establish less stringent compliance or reporting requirements in the rulemaking for small business.
- Establish less stringent schedules or deadlines in the rulemaking for compliance or reporting requirements for small business.
- Consolidate or simplify the rulemaking's compliance or reporting requirements for small business.
- Establish performance standards to replace design or operational standards in the rulemaking for small business.
- Exempt small business from any or all requirements of the rulemaking.

If legal and feasible, how does the rulemaking use a method discussed above to reduce the substantial impact on small business?

The proposed rulemaking does not have a substantial impact on small business. The rules do not make any special distinctions for small businesses. The rules do not impose any requirements on businesses, other than requirements imposed by the underlying statutes.

Text of Proposed Rulemaking

ITEM 1. Rescind 701—Chapter 207 and adopt the following new chapter in lieu thereof:

CHAPTER 207
REMOTE SALES AND MARKETPLACE SALES

701—207.1(423) Definitions.

207.1(1) *Incorporation of definitions.* To the extent they are consistent with Iowa Code chapter 423 and this chapter, all other words and phrases used in this chapter mean the same as defined in Iowa Code sections 423.1 and 423.14A and rule 701—200.1(423).

207.1(2) *Chapter-specific definitions.* For purposes of this chapter, unless the context otherwise requires:

“*Gross revenue from sales*” means all revenue from Iowa sales.

“*Iowa sales*” means the same as defined in Iowa Code section 423.14A(1) “a” and includes all retail sales, whether taxable or exempt, and other sales of tangible personal property, specified digital products, or services otherwise sold into Iowa or for delivery into Iowa, including wholesale or sale for resale. “Iowa sales” includes sales made through a marketplace.

“*Marketplace*” means any physical or electronic place, including but not limited to a store, booth, Internet website, catalog, television or radio broadcast, or a dedicated sales software application, where a marketplace seller sells or offers for sale tangible personal property, or specified digital products, or where services are offered for sale into Iowa regardless of whether the tangible personal property, specified digital product, marketplace seller, or marketplace has a physical presence in Iowa.

“*Physical presence in Iowa*” means the activities described in Iowa Code section 423.1(48) “a”(1).

“*Remote seller*” means a retailer that does not have a physical presence in Iowa but that makes sales of tangible personal property, specified digital products, or services that are sourced to Iowa.

“*Retailer*” means the same as defined in Iowa Code section 423.1(47). “Retailer” includes a marketplace facilitator that meets or exceeds the sales threshold and includes a remote seller.

“*Sales threshold*” means the revenue level that triggers collection and remittance obligations for Iowa sales tax and local option tax as described in Iowa Code section 423.14A(3): \$100,000 or more in gross revenue from Iowa sales into Iowa in either the current or immediately prior calendar year.

701—207.2(423) Administration; incorporation of 701—Chapter 11. Except as otherwise stated in this chapter, the requirements of 701—Chapter 11 apply to all retailers, including remote sellers and marketplace facilitators, required to collect and remit sales tax under this chapter.

701—207.3(423) Filing returns; payment of tax; penalty and interest; incorporation of 701—Chapter 202. Except as otherwise stated in this chapter, the filing requirements of 701—Chapter 202 apply to all retailers, including remote sellers and marketplace facilitators, required to collect and remit sales tax under this chapter.

701—207.4(423) Permits; incorporation of 701—Chapter 201. Except as otherwise stated in this chapter, the permit requirements of 701—Chapter 201 apply to all retailers, including remote sellers and marketplace facilitators, required to collect and remit Iowa sales tax and applicable local option sales tax under this chapter.

701—207.5(423) Retailers with physical presence in Iowa.

207.5(1) *Sales threshold inapplicable.* The sales threshold does not apply to any seller, marketplace facilitator, or other retailer that has physical presence in Iowa. A seller, marketplace facilitator, or other retailer with physical presence in Iowa must collect and remit Iowa sales tax and any applicable local option sales tax pursuant to Iowa Code section 423.14 even if the sales threshold is not met.

207.5(2) *Mixed marketplace and nonmarketplace sales.* A retailer with physical presence in Iowa who makes both marketplace and nonmarketplace sales must do the following:

a. Collect Iowa sales tax and any applicable local option tax on any taxable sales on which the marketplace does not collect tax.

b. Report on its Iowa sales tax return its gross revenue from all Iowa sales, including any marketplace sales on which the marketplace facilitator collected Iowa sales tax and applicable local option tax, regardless of whether the sales threshold is met.

EXAMPLE: Seller X is an Iowa-based business, with property and personnel located in Iowa. Seller X has \$80,000 in gross revenue from Iowa sales. Seller X makes \$10,000 of gross revenue from Iowa sales through a marketplace facilitator that collects Iowa sales tax and applicable local option sales tax. The remaining \$70,000 in gross revenue comes from Iowa sales made at Seller X's storefront in Iowa. Seller X must collect and remit Iowa sales tax and applicable local option sales tax on the \$70,000 in nonmarketplace sales. On its Iowa sales tax return, Seller X should report \$80,000 in gross revenue from sales. Seller X may take a deduction on its Iowa sales tax return of \$10,000 for sales on which the marketplace collected Iowa sales tax and applicable local option sales tax.

701—207.6(423) Remote sellers—registration and collection obligations.

207.6(1) *Combined Iowa sales from all sources.* The sum of the total amount of Iowa sales through marketplace and nonmarketplace Iowa sales determines whether remote sellers meet the sales threshold.

207.6(2) *Remote sellers with Iowa sales solely through marketplaces.* If a remote seller meets the sales threshold but only makes retail sales in Iowa through marketplaces, the remote seller's registration and collection obligations depend on whether all of the marketplace facilitators through which the remote seller makes Iowa sales are registered to collect Iowa sales tax and applicable local option tax.

a. Registered marketplace facilitators. If all the marketplace facilitators used by the remote seller to make taxable Iowa sales collect Iowa sales tax and applicable local option sales tax, the remote seller does not have to collect the tax. The marketplace facilitator will report and pay Iowa sales tax and applicable local option sales tax on a sales tax return filed by the marketplace facilitator.

EXAMPLE: Seller X has \$200,000 in gross revenue from Iowa sales. Seller X makes all of its Iowa sales through a marketplace facilitator that collects Iowa sales tax and applicable local option sales tax on sales. Seller X does not need to register for an Iowa sales tax permit or file an Iowa sales tax return. The marketplace facilitator will report the Iowa sales tax and applicable local option sales tax on the marketplace facilitator's Iowa sales tax return.

b. Nonregistered marketplace facilitators. If a marketplace facilitator is not required to or fails to register and collect tax in Iowa, remote sellers who exceed the sales threshold must obtain an Iowa sales tax permit, collect Iowa sales tax and applicable local option sales tax, and file Iowa sales tax returns for sales made on that marketplace.

EXAMPLE: Seller X has \$200,000 in gross revenue from Iowa sales. Seller X has \$2,000 in gross revenue from sales on Marketplace Y and \$198,000 in gross revenue from sales on Marketplace Z. Marketplace Y meets the sales threshold and is registered to collect and remit Iowa sales tax and applicable local option sales tax in Iowa. Marketplace Z, however, has very few low-cost Iowa sales, meets neither the gross revenue nor volume of sales threshold, and is therefore not required to and does not collect tax on Iowa sales. Seller X must collect Iowa sales tax and applicable local option sales tax on retail sales sourced to Iowa that are made on Marketplace Z.

207.6(3) *Remote sellers making both marketplace and nonmarketplace sales.* A remote seller that exceeds the sales threshold and makes nonmarketplace Iowa sales, such as through the remote seller's own website, must obtain an Iowa sales tax permit. The remote seller must report on its Iowa sales tax return its gross revenue from all Iowa sales. The remote seller would be able to deduct the amount of gross sales made through any marketplaces registered to collect tax in Iowa on the remote seller's sales tax return. A remote seller making Iowa sales through a marketplace operated by an unregistered marketplace facilitator must collect and remit Iowa sales tax and applicable local option sales tax on those sales.

701—207.7(423) Marketplace facilitators—registration and collection obligations. A marketplace facilitator that meets the sales threshold must collect and remit Iowa sales tax and applicable local option

sales tax on all taxable sales made through the marketplace facilitator's marketplace that are sourced to Iowa. A marketplace facilitator must collect Iowa sales tax on all taxable Iowa sales, regardless of the location or sales volume of a marketplace seller that makes sales on a marketplace facilitator's marketplace.

EXAMPLE: M is a marketplace facilitator that meets the sales threshold and therefore collects Iowa sales tax and applicable local option sales tax on Iowa sales facilitated through M's marketplace. Seller S lists soccer balls for sale on M's marketplace. A purchaser in Iowa buys a soccer ball listed by S on M's marketplace. The soccer ball is delivered to the purchaser's home address in Iowa. M must collect Iowa sales tax and applicable local option sales tax on the sale of the soccer ball. The outcome is the same regardless of whether S is located in Iowa and regardless of S's Iowa sales volume.

701—207.8(423) Advertising on a marketplace. A marketplace seller does not sell or offer to sell tangible personal property, a specified digital product, or a service on a marketplace when merely advertising that product on a marketplace.

701—207.9(423) Commencement of collection obligation and sales tax liability.

207.9(1) *Commencement of collection obligation.* If a remote seller or marketplace facilitator without physical presence in Iowa did not exceed the sales threshold for the prior year and therefore does not collect sales tax in the current year, and exceeds the sales threshold in the current year, the remote seller or marketplace facilitator must collect Iowa sales tax and applicable local option sales tax starting on the first day of the next calendar month that starts at least 30 days from the day the remote seller or marketplace facilitator first exceeded the sales threshold. The remote seller or marketplace facilitator must collect tax through the end of the calendar year in which the sales threshold was met or exceeded as well as the entire next calendar year.

EXAMPLE: Company S, a remote seller, did not exceed the sales threshold in 2018. On September 15, 2019, S exceeds the sales threshold for the first time. S must register to collect Iowa sales tax and must begin collecting Iowa sales tax and applicable local option sales tax on November 1, 2019. S must continue to collect through at least December 31, 2020. S's sales volume in 2020 and later years will determine whether S must collect Iowa sales tax and applicable local option sales tax after December 31, 2020.

207.9(2) *Commencement of sales tax liability.* If a remote seller or marketplace facilitator without physical presence in Iowa exceeds the sales threshold as described in subrule 207.9(1), the remote seller or marketplace facilitator without physical presence in Iowa is not liable for any Iowa sales tax and applicable local option sales tax not collected beginning on January 1 of the current year through the day prior to the date the remote seller or marketplace facilitator without physical presence in Iowa is obligated to collect the tax as described in subrule 207.9(1). A purchaser will be liable for any use tax that accrues prior to the date the remote seller or marketplace facilitator without physical presence in Iowa is obligated to collect Iowa sales tax and applicable local option sales tax as described in subrule 207.9(1).

207.9(3) *Permit registration.* If a remote seller or marketplace facilitator without physical presence in Iowa that makes taxable sales exceeds the sales threshold, the remote seller or marketplace facilitator without physical presence in Iowa must register for a sales and use tax permit under 701—Chapter 201 prior to the date the remote seller or marketplace facilitator without physical presence in Iowa is obligated to collect Iowa sales tax and applicable local option sales tax as described in subrule 207.9(1).

701—207.10(423) Retailers registered and collecting who fail to meet or exceed sales threshold. If a retailer is registered to collect Iowa sales tax and applicable local option sales tax and collects in year 1 and fails to meet or exceed the sales threshold in year 2, the retailer must still collect all applicable sales taxes in year 2. If the retailer does not meet or exceed the sales threshold at any point in year 2, the retailer is not required to collect and remit Iowa sales tax or applicable local option sales tax in year 3. However, if a retailer is registered to collect, the retailer must continue collecting regardless of the impact of the sales threshold. A retailer that falls under the sales threshold may either submit sales tax

returns demonstrating it did not collect tax until a time in the future when the retailer meets or exceeds the sales threshold or cancel its sales tax permit if it wishes to cease collecting. If the retailer meets or exceeds the sales threshold at any point thereafter, the retailer would need to register again in accordance with 701—Chapter 201 and begin collecting in accordance with this chapter.

EXAMPLE: Company S, a remote seller, exceeds the sales threshold on June 25, 2019. S must collect Iowa sales tax and applicable local option sales tax beginning August 1, 2019, and must collect for all of 2020. S does not meet or exceed the sales threshold in 2020; therefore, S is not obligated to collect sales tax on January 1, 2021. S may cease collection and cancel its sales tax permit effective January 1, 2021.

701—207.11(423) Coupons; incorporation of rule 701—213.10(423). Coupons and other discounts offered by marketplace facilitators and remote sellers are retailers' discounts, which reduce the sales price and thus the taxable amount of a sale. The requirements of rule 701—213.10(423) apply to marketplace facilitators and remote sellers in the same manner that those requirements apply to retailers.

701—207.12(423) Customer returns marketplace purchase directly to marketplace seller.

207.12(1) If a marketplace facilitator collects Iowa sales tax and applicable local option sales tax on the sale and the customer returns the item directly to the marketplace seller, either the marketplace facilitator or marketplace seller shall refund the full price paid by the customer, including all tax collected by the marketplace facilitator, upon acknowledgement of receipt of the item by the marketplace seller.

207.12(2) If the marketplace facilitator does not refund the amount paid and instead requires or permits the marketplace seller to do so, the marketplace seller shall refund the full price paid by the customer, including all tax collected by the marketplace facilitator. The marketplace seller shall seek reimbursement of Iowa sales tax and applicable local option sales tax from the marketplace facilitator. The marketplace facilitator shall reimburse the returned Iowa sales tax and applicable local option sales tax to the marketplace seller once the marketplace seller has adequately demonstrated that the marketplace seller returned the tax in conjunction with a return made directly to the marketplace seller. The marketplace facilitator may claim a credit for the return of Iowa sales tax and local option sales tax on its Iowa sales tax return.

207.12(3) Nothing in this rule requires a marketplace seller to accept a return as described in this rule. Nothing in this rule requires a marketplace facilitator to allow returns to be made directly to a marketplace seller.

701—207.13(423) Exempt and nontaxable sales.

207.13(1) Exempt sales. A retailer required to collect and remit Iowa sales tax and applicable local option sales tax in accordance with Iowa Code section 423.14A and this chapter is responsible for correctly applying exemptions for tangible personal property, specified digital products, and services. As a member of the streamlined sales tax governing board, the department maintains a taxability matrix to describe whether various items are taxable or exempt. See rule 701—204.6(423) for an explanation of the liability relief provided to retailers that rely on the taxability matrix in determining whether to collect tax on an item.

207.13(2) Nontaxable sales. A retailer, including an Iowa retailer with a physical presence in Iowa, a remote seller, or a marketplace facilitator, that makes or facilitates only nontaxable sales, such as sale for resale or wholesale transactions, is not required to register for a sales tax permit.

207.13(3) Exemption certificates submitted to a marketplace facilitator. An exemption certificate as described in rule 701—288.3(423) that identifies the marketplace facilitator as the seller may be used by the purchaser for sales made or facilitated by the marketplace facilitator.

701—207.14(423) Other taxes for marketplace sales and items not subject to sales/use tax. A marketplace facilitator is not obligated to collect tax on a product sold through a marketplace it operates that is not subject to Iowa sales and use tax.

EXAMPLE: A marketplace facilitator allows marketplace sellers to list for sale vehicles subject to registration under Iowa Code chapter 321, including the fee for new registration imposed in accordance

with Iowa Code section 321.105A. Because the fee for new registration is not imposed under Iowa Code chapter 423, the marketplace facilitator is not obligated to collect the fee for new registration.

These rules are intended to implement Iowa Code section 423.14A.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 701—Chapter 208
“Multilevel Marketer Agreements”

Iowa Code section(s) or chapter(s) authorizing rulemaking: 421.14, 422.68 and 423.42
State or federal law(s) implemented by the rulemaking: Iowa Code sections 421.5 and 421.17

Public Hearing

A public hearing at which persons may present their views orally or in writing will be held as follows:

November 8, 2023
9 a.m. to 12 noon

Via video/conference call:
meet.google.com/msc-ekdk-xws
PH: 262.864.1688
PIN: 672 555 995#

Public Comment

Any interested person may submit written or oral comments concerning this Regulatory Analysis. Written or oral comments in response to this Regulatory Analysis must be received by the Department of Revenue no later than 4:30 p.m. on the date of the public hearing. Comments should be directed to:

Nick Behlke
Department of Revenue
Hoover State Office Building
P.O. Box 10457
Des Moines, Iowa 50306-3457
Phone: 515.336.9025
Email: nick.behlke@iowa.gov

Purpose and Summary

The proposed rulemaking rescinds Chapter 208 and adopts a new Chapter 208 on multilevel marketer agreements. These agreements allow multilevel marketer companies to enter into contracts with the Department to collect and remit sales tax. The rules help the companies understand eligibility requirements for the multilevel marketer program. This rulemaking repromulgates the existing Chapter 208 with updated language and an additional rule to provide additional clarity that the Department determined was necessary.

Analysis of Impact

1. Persons affected by the proposed rulemaking:

- Classes of persons that will bear the costs of the proposed rulemaking:

The proposed rules do not create costs for any class of persons. There is no fee associated with the multilevel marketer agreement.

- Classes of persons that will benefit from the proposed rulemaking:

Multilevel marketer companies benefit from clarification about their rights and responsibilities under Iowa law and from having a process that allows them to enter into agreements to more easily collect Iowa sales tax.

2. Impact of the proposed rulemaking, economic or otherwise, including the nature and amount of all the different kinds of costs that would be incurred:

- Quantitative description of impact:

There is no monetary cost associated with the rules.

- Qualitative description of impact:

The rules allow multilevel marketer companies to enter into contracts to more easily collect and remit sales tax and provide clarity on the obligations of multilevel marketer companies.

3. Costs to the State:

- Implementation and enforcement costs borne by the agency or any other agency:

There are some costs associated with administration of these proposed rules. The rules provide multilevel marketers the opportunity to enter into agreements for a tax collection arrangement that is specific to them. The staff allocated to administer this program only spend a small portion of their time on the multilevel marketer program and perform many other duties.

- Anticipated effect on state revenues:

Chapter 208 provides rules whereby multilevel marketing companies may enter into contracts with the Department to collect and remit sales tax. The Department's Tax Research Bureau has estimated the fiscal impact of implementation of these rules. Although companies that enter into these contracts would be required to remit Iowa sales tax regardless of the rules in question; for purposes of this estimate, it is assumed that the rules' fiscal impact represents 100 percent of revenues reported by companies with which the Department has entered into such contracts. Given the foregoing, implementation of these rules yielded Iowa sales tax revenues of \$7.1 million in FY 2023. This impact would be assumed to increase in later years as a result of price inflation only.

4. Comparison of the costs and benefits of the proposed rulemaking to the costs and benefits of inaction:

While there may be some minor administrative costs in providing this program, the rules are necessary to establish the multilevel marketer agreement program, and the program aids in the efficient collection of tax by reducing the number of parties required to remit tax.

5. Determination whether less costly methods or less intrusive methods exist for achieving the purpose of the proposed rulemaking:

The Department carefully reviewed the rules and determined that there is no less costly or intrusive method to achieve the benefit of providing this process to multilevel marketers.

6. Alternative methods considered by the agency:

- Description of any alternative methods that were seriously considered by the agency:

The Department considered repealing the rules entirely. Multilevel marketer companies would still have sales tax obligations under the general rules on marketplace sellers.

- Reasons why alternative methods were rejected in favor of the proposed rulemaking:

The Department has determined that the rules are necessary because they go a step further to allow multilevel marketer companies to enter into written contracts to collect and remit sales tax and clarify the specific rights and responsibilities of multilevel marketer companies.

Small Business Impact

If the rulemaking will have a substantial impact on small business, include a discussion of whether it would be feasible and practicable to do any of the following to reduce the impact of the rulemaking on small business:

- Establish less stringent compliance or reporting requirements in the rulemaking for small business.
- Establish less stringent schedules or deadlines in the rulemaking for compliance or reporting requirements for small business.
- Consolidate or simplify the rulemaking's compliance or reporting requirements for small business.

- Establish performance standards to replace design or operational standards in the rulemaking for small business.
- Exempt small business from any or all requirements of the rulemaking.

If legal and feasible, how does the rulemaking use a method discussed above to reduce the substantial impact on small business?

The proposed rulemaking does not have a substantial impact on small business. It imposes the same requirements for all multilevel marketer companies wishing to enter into a contract with the Department.

Text of Proposed Rulemaking

ITEM 1. Rescind 701—Chapter 208 and adopt the following **new** chapter in lieu thereof:

CHAPTER 208
MULTILEVEL MARKETER AGREEMENTS

701—208.1(421) Multilevel marketers—in general. Multilevel marketer companies may enter into a written contract with the department to collect and remit state and local option sales taxes on sales of tangible personal property and specified digital products to independent distributors for resale and remit the taxes directly to the department. To be eligible for the multilevel marketer program, the company must meet certain eligibility requirements and agree to certain terms in the multilevel marketer agreement as set forth in 701—subrules 208.1(3) and 208.1(4). All written contacts with the department should be sent to Nonfiler Unit, Compliance Division, Iowa Department of Revenue, P.O. Box 10456, Des Moines, Iowa 50306-0456.

208.1(1) Definitions. The following definitions of terms are applicable to this chapter:

“Independent distributor” means a seller who purchases products for resale to an Iowa consumer based on a price suggested by a multilevel marketer.

“Multilevel marketer” means a wholesaler that sells tangible personal property or specified digital products for resale via a network of independent distributors who then sell the property to the ultimate consumers located in Iowa at a retail price suggested by the multilevel marketer.

“Sales tax” or *“sales taxes”* for the purpose of this rule means Iowa state sales tax, including local option sales and service taxes, and state use tax. To determine whether local option sales and service taxes are due, see rules 701—270.2(422B) and 701—270.3(422B).

208.1(2) Collection of tax. Iowa state sales tax is to be collected on the wholesale or retail selling price if delivery of the multilevel marketer’s tangible personal property or specified digital product occurs in Iowa or the property is used in Iowa (more information is contained in subparagraph 208.1(4)“a”(1)). In addition, local option sales tax is due on the sale if delivery of the tangible personal property or specified digital product to the consumer occurs within a local option tax jurisdiction. More information and examples illustrating delivery and taxation can be found in 701—270.2(422B) and 701—270.3(422B).

208.1(3) Eligibility requirements. For a multilevel marketer to be eligible for a multilevel marketer agreement, the following criteria must be met:

- Tangible personal property or specified digital products are sold by the multilevel marketer to an independent distributor for resale to an Iowa end user or for a distributor’s personal use.
- Unless authorized by the department, the multilevel marketer must not have been previously required to be registered to remit sales tax.
- The multilevel marketer must have contacted the department with a request to collect and remit sales taxes directly to the department on sales made by an independent distributor.
- The multilevel marketer must not be under audit or examination by the department on the effective date of the agreement.

The department has full discretion to determine if a multilevel marketer meets the eligibility requirements for a multilevel marketer agreement. The department has full discretion to decide whether to enter a multilevel marketer agreement. The department can request any and all information and

documentation necessary to determine whether eligibility requirements are met. Failure to timely submit information and documents requested by the department will result in the department's refusal to enter into an agreement with the multilevel marketer.

208.1(4) Terms of the multilevel marketer agreement. The multilevel marketer agreement will become effective on the date an authorized representative of the multilevel marketer executes the agreement. Unless terminated in accordance with subrule 208.1(5), the multilevel marketer agreement remains in effect as long as the multilevel marketer has an independent distributor making sales in Iowa. Terms of agreements are based on results of negotiations between the multilevel marketer and the department. However, the following general terms must be in each multilevel marketer agreement:

a. The multilevel marketer agrees to the following terms:

(1) The multilevel marketer agrees to collect tax on the following three types of sales, excluding sales properly exempt from tax and evidenced by a valid exemption certificate:

1. The multilevel marketer agrees to collect sales tax from the independent distributors based on the suggested retail price of its product;

2. If the multilevel marketer allows independent distributors to purchase its product at a wholesale price for the distributor's personal use, then the multilevel marketer agrees to collect sales tax on sales that are based on the wholesale price to the independent Iowa distributor, unless the department waives this requirement; and

3. The multilevel marketer agrees to collect sales tax on all retail sales by the multilevel marketer to consumers that are subject to sales tax;

(2) The multilevel marketer will timely remit sales tax on transactions described in subparagraph 208.1(4) "a"(1);

(3) The multilevel marketer will maintain records to establish the accuracy of the sales and use tax returns within the applicable statutes of limitation;

(4) The multilevel marketer agrees that the sales tax shall be added to the retail price charged to the consumer, as required by Iowa Code section 423.14(2) "e";

(5) The multilevel marketer agrees to be subject to audit and to pay any tax, penalty, and interest that are ultimately found to be legally due and that were required to be collected by the multilevel marketer under Iowa law, these rules, and the multilevel marketer agreement;

(6) The multilevel marketer agrees to abide by the rules in 701—Chapter 208; and

(7) The multilevel marketer agrees to register for an Iowa sales and use tax permit.

b. The department agrees to the following terms:

(1) The department will not audit, assess or demand payment of sales tax, penalty or interest from the multilevel marketer for any tax periods ending before the effective date of the multilevel marketer agreement, unless the multilevel marketer had a permit registration with the department prior to the effective date of this multilevel marketing agreement. If a multilevel marketer had a permit registration with the department prior to the effective date of this multilevel marketing agreement, the department may audit, assess, refund, or demand payment of tax, penalty, and interest from the multilevel marketer for any of those previous tax periods within the applicable statute of limitation.

(2) Unless required for transactions outside the multilevel marketer agreement, the department will not require the multilevel marketer to retroactively register for an Iowa sales and use tax permit or file Iowa sales and use tax returns for periods ending on or before the effective date of this agreement.

(3) The department agrees to allow a deduction from taxable sales reported by the multilevel marketer for merchandise returned by an independent distributor for which tax has already been paid to the department and for which the multilevel marketer, via the distributor, has allowed a credit or refund of the tax to the consumer.

c. Other general agreement terms:

(1) The multilevel marketer agreement is binding upon all parties, including their successors and assignees; and

(2) The terms, provisions, interpretations and enforcement of the multilevel marketer agreement are to be governed by the laws of the state of Iowa.

d. Refunds. Refunds for any overpayment of taxes paid by a consumer as a result of a multilevel marketer agreement should be claimed on the proper Iowa refund claim form as designated by the director. Under this agreement, if the retail sale is made by an Iowa retailer to an out-of-state consumer, the multilevel marketer agrees to forego any claim for refund of tax that was paid on such sale.

208.1(5) *Termination of a multilevel marketer agreement.* If any of the following events occur, an executed multilevel marketer agreement may be declared null and void:

a. Termination of a multilevel marketer agreement at the department's discretion.

(1) The multilevel marketer has misrepresented any material fact regarding its activities, operations, tax liabilities, or eligibility under the agreement.

(2) It is determined by the department that the multilevel marketer had been notified that it was to be or was under audit by the department prior to the time the multilevel marketer executed the multilevel marketer agreement.

b. Termination of a multilevel marketer agreement by mutual agreement of the parties.

(1) Change occurs in law that impacts the tax liability subject to the multilevel marketer agreement.

(2) Collection and remittance of sales tax as required under the agreement are more feasible by other means.

Written notice of termination will be promptly given by the department in the event of termination under paragraph 208.1(5) "a." To accommodate the time necessary to effectuate changes by the multilevel marketer and the department, the effective date of the termination of the multilevel marketer agreement shall be 60 days from the date of the notice of the written termination, unless a request for additional time is made by the multilevel marketer and the request is granted by the department.

208.1(6) *Liability of independent distributors.* After execution of a multilevel marketer agreement, an independent distributor must collect, report, and remit to the department, unless remitted to the multilevel marketer, any and all sales taxes that the independent distributor is required to collect, report, and remit that exceed the amount of tax that the independent distributor has previously remitted to the multilevel marketer company. If such excess tax is remitted to the multilevel marketer, the multilevel marketer shall report and remit the tax to the department.

EXAMPLE 1: An independent distributor purchased products from the multilevel marketer at the wholesale price because the distributor thought that the product would be for the personal use of the distributor. The distributor paid Iowa tax based on the wholesale price to the multilevel marketer and the multilevel marketer remitted the tax to the state of Iowa. Subsequently, the distributor resold the product to an Iowa customer at a retail price, which is greater than the wholesale price. The distributor is required to charge Iowa tax on the retail price. The distributor is also required to report and remit directly to the department or the multilevel marketer the difference between the tax previously paid on the wholesale price and the tax collected on the retail price from the Iowa customer.

EXAMPLE 2: An independent distributor purchased products from a multilevel marketer for resale at the retail price suggested by the multilevel marketer. Tax was collected by the multilevel marketer from the independent distributor on the suggested retail price of the products and remitted to the department by the multilevel marketer. The independent distributor subsequently sold the product to an Iowa customer for a price greater than the suggested retail price. The independent distributor is required to charge Iowa tax on the full sale price. The independent distributor is also required to report and remit directly to the department or to the multilevel marketer the difference between the tax previously paid on the suggested retail price and the tax collected on the price charged the Iowa customer.

If an independent distributor makes sales that are exempt from sales taxes, then the independent distributor must obtain a valid exemption certificate from the purchaser to evidence the transaction and provide a copy of the completed exemption certificate to the multilevel marketer that has the multilevel marketer agreement with the department.

208.1(7) *Legislative changes.* All multilevel marketer agreements are subject to all applicable legislative enactments that are made subsequent to the agreement and that impact the agreement.

701—208.2(421) Other sources of tax collection requirements. Notwithstanding any provision in this chapter or any multilevel marketer agreement and notwithstanding whether a multilevel marketer

agreement is entered between a person and the department, multilevel marketers and independent distributors may have an obligation to collect Iowa sales tax and any applicable local option sales tax if they meet the definition of “retailer” under Iowa Code section 423.1(47).

These rules are intended to implement Iowa Code sections 421.5 and 421.17.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 701—Chapter 214
“Agricultural Rules”

Iowa Code section(s) or chapter(s) authorizing rulemaking: 421.14, 422.68 and 423.42

State or federal law(s) implemented by the rulemaking: Iowa Code sections 423.2(1), 423.2(6), 423.3(2), 423.3(3), 423.3(5), 423.3(6), 423.3(8), 423.3(11) through 423.3(16), 423.3(51) and 423.3(57).

Public Hearing

A public hearing at which persons may present their views orally or in writing will be held as follows:

November 8, 2023
9 a.m. to 12 noon

Via video/conference call:
meet.google.com/msc-ekdk-xws
PH: 262.864.1688
PIN: 672 555 995#

Public Comment

Any interested person may submit written or oral comments concerning this Regulatory Analysis. Written or oral comments in response to this Regulatory Analysis must be received by the Department of Revenue no later than 4:30 p.m. on the date of the public hearing. Comments should be directed to:

Nick Behlke
Department of Revenue
Hoover State Office Building
P.O. Box 10457
Des Moines, Iowa 50306-3457
Phone: 515.336.9025
Email: nick.behlke@iowa.gov

Purpose and Summary

The purpose of this proposed rulemaking is to rescind Chapter 214 and adopt new Chapter 214, which describes the Department’s interpretation of the underlying statutes to aid the public in understanding the application of sales and use tax statutes to taxpayers engaged in agricultural activity. The Department proposes revisions to the rules to provide clarification and to remove obsolete, unnecessary, and duplicative statutory language. The Department also renumbered some rules due to other edits and for organizational reasons.

Analysis of Impact

1. Persons affected by the proposed rulemaking:

- Classes of persons that will bear the costs of the proposed rulemaking:

The proposed rulemaking does not create costs for any class of persons beyond what is imposed by the underlying statutes.

- Classes of persons that will benefit from the proposed rulemaking:

The public, especially those involved in agriculture, will benefit from the proposed rulemaking because it provides guidance about the scope and applicability of exemptions on agriculture-related purchases.

2. Impact of the proposed rulemaking, economic or otherwise, including the nature and amount of all the different kinds of costs that would be incurred:

- Quantitative description of impact:

The proposed rulemaking does not create costs for any class of persons beyond what is imposed by the underlying statutes.

- Qualitative description of impact:

The proposed rulemaking reduces uncertainty about the applicability of certain exemptions related to agriculture. Failure to adopt the rules would lead to confusion, questions to the Department, and potential collection of tax for an exempt purchase.

3. Costs to the State:

- Implementation and enforcement costs borne by the agency or any other agency:

There are no costs to the Department to implement the proposed rulemaking beyond what would otherwise be required to administer the underlying statutes.

- Anticipated effect on state revenues:

There is no anticipated effect on state revenues, although the proposed rulemaking provides clarification about exempt agriculture-related sales, making it less likely tax will be collected on an exempt sale.

4. Comparison of the costs and benefits of the proposed rulemaking to the costs and benefits of inaction:

The cost of inaction would be failing to update the chapter to provide clarification and to remove unnecessary, obsolete, and duplicative statutory language. The benefit of the proposed rulemaking is to provide additional certainty and reduce confusion about the applicability of exemptions to agriculture-related purchases.

5. Determination whether less costly methods or less intrusive methods exist for achieving the purpose of the proposed rulemaking:

The proposed rulemaking is not costly or intrusive, and its purpose is to provide guidance on the applicability of specific exemptions on agriculture-related purchases. The Department considered the option of not implementing rules; however, it determined that the rules provide helpful guidance and useful clarification to the public.

6. Alternative methods considered by the agency:

- Description of any alternative methods that were seriously considered by the agency:

The Department considered the option of not implementing rules; however, it determined the rules provide helpful guidance and useful clarification to retailers and the public beyond what is provided by the underlying statutes.

- Reasons why alternative methods were rejected in favor of the proposed rulemaking:

The Department determined that proceeding without rules would lead to confusion about whether certain purchases are exempt or subject to tax, which could lead to overcollection.

Small Business Impact

If the rulemaking will have a substantial impact on small business, include a discussion of whether it would be feasible and practicable to do any of the following to reduce the impact of the rulemaking on small business:

- Establish less stringent compliance or reporting requirements in the rulemaking for small business.
- Establish less stringent schedules or deadlines in the rulemaking for compliance or reporting requirements for small business.
- Consolidate or simplify the rulemaking's compliance or reporting requirements for small business.
- Establish performance standards to replace design or operational standards in the rulemaking for small business.

- Exempt small business from any or all requirements of the rulemaking.

If legal and feasible, how does the rulemaking use a method discussed above to reduce the substantial impact on small business?

The proposed rulemaking does not have a substantial impact on small business because it does not make any distinctions based on the size of a business. The proposed rulemaking does not impose any requirements on businesses, other than what is imposed by the underlying statutes.

Text of Proposed Rulemaking

ITEM 1. Rescind 701—Chapter 214 and adopt the following **new** chapter in lieu thereof:

CHAPTER 214
AGRICULTURAL RULES

701—214.1(423) Farm machinery and equipment and items used in agricultural production that are attached to a self-propelled implement of husbandry. The sales price from the sale of farm machinery and equipment directly and primarily used in production of agricultural products and certain items used in agricultural production that are attached to or towed by a self-propelled implement of husbandry is exempt from sales and use tax.

214.1(1) Farm machinery and equipment.

a. Exempt. Under this rule, to be eligible for the exemption from the tax, the farm machinery or equipment must be directly and primarily used in production of agricultural products and must also be one of the following:

- (1) A self-propelled implement; or
- (2) An implement customarily drawn or attached to a self-propelled implement; or
- (3) A grain dryer; or
- (4) An auxiliary attachment that improves the performance, safety, operation, or efficiency of a qualifying implement or grain dryer; or
- (5) A replacement part for any item described in subparagraph (1), (2), (3), or (4).

b. Taxable. A vehicle subject to registration as defined in Iowa Code section 423.1, an implement customarily drawn by or attached to a vehicle subject to registration, an auxiliary attachment for a vehicle subject to registration, or any replacement part for a vehicle, implement, or auxiliary attachment for a vehicle subject to registration is not eligible for the exemption allowed under this rule.

214.1(2) Attachments to self-propelled implements of husbandry.

a. Exempt. Exempt from the tax under this rule are the following items if, and only if, they are used in agricultural production:

- (1) A snow blower that is to be attached to a self-propelled implement of husbandry; or
- (2) A rear-mounted or front-mounted blade that is to be attached to or towed by a self-propelled implement of husbandry; or
- (3) A rotary cutter that is to be attached to a self-propelled implement of husbandry.

b. Used in agricultural production. Under this subrule, the items must be used in agricultural production, and not “directly and primarily” used in production of agricultural products as is required under subrule 214.1(1).

EXAMPLE: Farmer Jones purchases a front-mounted blade that will be attached to a self-propelled implement of husbandry (e.g., farming tractor). Farmer Jones primarily uses the blade to prepare previously uncultivated land—a use that is not for agricultural production. However, Farmer Jones sporadically uses the front-mounted blade for agricultural production. Even though Farmer Jones does not directly and primarily use the front-mounted blade in agricultural production, the front-mounted blade is exempt from sales or use tax because the blade is occasionally used in agricultural production and it is attached to a self-propelled implement of husbandry.

214.1(3) Definitions and specific provisions. For the purposes of this rule, the following definitions and provisions apply.

a. Production of agricultural products. The term “production of agricultural products” means the same as the term “agricultural production,” which is defined in rule 701—200.1(423) to mean a farming operation undertaken for profit by the raising of crops or livestock. Nonexclusive examples of items not included within the meaning of the term “agricultural production” are the clearing or preparation of previously uncultivated land, the creation of farm ponds, and the erection of machine sheds, confinement facilities, storage bins, or other farm buildings. Machinery and equipment used for these purposes would be used for activities that are preparatory to, but not a part of, the production of agricultural products and, therefore, are not exempt.

b. Farm machinery and equipment. The term “farm machinery and equipment” means machinery and equipment specifically designed for use in the production of agricultural products and machinery and equipment that are not specifically designed for use in the production of agricultural products but are directly and primarily used for that purpose.

EXAMPLE: Farmer Jones raises livestock, and his farming operation requires that fences be repaired to confine the livestock. Farmer Jones purchases a posthole digger that is customarily attached to a tractor and uses the digger to repair the fences used to confine the livestock. The posthole digger is not specifically designed for use in the production of agricultural products but is directly and primarily used in the production of agricultural products. Therefore, the exemption would apply.

c. Self-propelled implement. The term “self-propelled implement” means an implement that is capable of movement from one place to another under its own power. An implement is not self-propelled merely because it has moving parts. The term “self-propelled implement” includes, but is not limited to, the following items: skid loaders and tractors. The term also includes, but is not limited to, the following machinery if capable of movement under its own power: combines, corn pickers, fertilizer spreaders, hay conditioners and windrowers, sprayers, and bean buggies.

d. Implements customarily drawn or attached to self-propelled implements. The following is a nonexclusive, representative list of implements customarily drawn or attached to self-propelled implements: augers, balers, blowers, combines, conveyers, cultivators, disks, drags, dryers (portable), farm wagons, feeder wagons, fertilizer spreaders, front- and rear-end loaders, harrows, hay loaders, hay mowers, hay rakes, husking machines, manure spreaders, planters, plows, rotary hoes, sprayers and tanks, and tillage equipment.

e. Directly used in agricultural production.

(1) Property is “directly used” only if it is used to initiate, sustain, or terminate an exempt activity. In determining whether any property is directly used, consideration should be given to the following factors:

1. The physical proximity of the property to other property clearly exempt as directly used in agricultural production. The closer the property is to exempt property, the more likely it is that the property is directly used in agricultural production.

2. The chronological proximity of the use of the property in question to the use of property clearly exempt as directly used in agricultural production. The closer the proximity of the property’s use within the production process to the use of exempt property, the more likely the use is direct rather than remote.

3. The active causal relationship between the use of the property in question and agricultural production. The fewer intervening causes between the use of the property and the production of the product, the more likely it is that the property is directly used in agricultural production.

(2) The fact that particular machinery or equipment is essential to the production of agricultural products because its use is required either by law or practical necessity does not, of itself, mean that the machinery or equipment is directly used in the production of agricultural products. Machinery or equipment that comes into actual physical contact with the soil or crops during the operations of planting, cultivating, harvesting, and soil preparation will be presumed to be machinery or equipment used in agricultural production.

f. Primarily used in agricultural production. Property is “primarily used” in agricultural production based on the total time it is used in agricultural production in comparison to the time it is used for other purposes. Any property used in agricultural production more than 50 percent of its total use time is eligible for exemption.

g. Beginning and end of agricultural production. Agricultural production begins with the cultivation of land previously cleared for the planting of crops or begins with the purchase or breeding of livestock or domesticated fowl. Agricultural production ceases when an agricultural product has been transported to the point where it will be sold by the producer or processed for further use.

EXAMPLE: Farmer Brown uses a tractor and wagon to haul harvested corn from a field to a grain dryer located on the farm. After the corn is dried, the same tractor and wagon are used to move the grain to a storage bin, also located on the farm. Later, the same tractor and wagon are used to deliver the corn from the farm to the local elevator where the corn is sold. After Farmer Brown deposits the corn there, the local elevator uses its own tractor and wagon to move the corn to a place of relatively permanent storage. Farmer Brown has used the tractor and wagon in the production of agricultural products, and the exemption would apply to Farmer Brown's tractor and wagon. However, the elevator has not used its tractor and wagon in agricultural production; thus, the exemption would not be allowed for the elevator's tractor and wagon.

h. Grain dryer. The term "grain dryer" includes the heater and the blower necessary to force the warmed air into a grain storage bin. The term "grain dryer" does not include equipment, such as augers and spreaders, used in grain storage or movement, nor does it include any other equipment, such as specialized flooring, that is not a grain dryer. Equipment that is not a grain dryer but is used in grain drying may be exempt if the equipment is a self-propelled implement or customarily drawn or attached to a self-propelled implement and is directly and primarily used in agricultural production.

i. Replacement parts.

(1) The term "replacement parts" means any farm machinery or equipment that is substituted for another part that has broken, worn out or has become obsolete or otherwise unable to perform its intended function. Replacement parts are those parts that materially add to the value of farm machinery or equipment, appreciably prolong its life or keep it in its ordinarily efficient operating condition. Excluded from the meaning of the term "replacement parts" are supplies and computer software. Sales of supplies and computer software are taxable. Nonexclusive examples of supplies include: lubricants, oils, greases, and coolants.

(2) Tangible personal property that has an expected useful life of 12 months or more and is used in the operation of farm machinery or equipment is rebuttably presumed to be a replacement part. Tangible personal property that is used in the same manner but has an expected useful life of less than 12 months is rebuttably presumed to be a supply.

(3) The sale or lease of a replacement part is exempt from tax if the replacement part is used in any repair or reconstruction of the exempt piece of farm machinery or equipment used in the production of agricultural products. Nonexclusive examples of replacement parts to machinery and equipment that would be exempt include: air-conditioning parts, computer equipment parts, fire equipment parts, glass parts, mirrors, headlights, communication systems, and global positioning equipment parts.

j. Implement of husbandry.

(1) The term "implement of husbandry" means any tool, equipment, or machinery necessary to the carrying on of the business of agricultural production and without which that could not be done. To be an implement of husbandry, the following must both be true:

1. The tool, equipment, or machine must be necessary to the carrying on of the business of agricultural production; and

2. Agricultural production must be impossible without the use of the tool, equipment, or machine.

(2) Whether a given item is an implement of husbandry depends on the facts of each particular case, and in each particular case the person claiming the exemption has the burden of proving that the person is entitled to the exemption.

k. Snow blower. "Snow blower" as used in this rule means an attachment that has the primary purpose of snow removal by the throwing of snow and that is ordinarily thought of as a snow blower.

l. Rear-mounted or front-mounted blade. "Rear-mounted or front-mounted blade" as used in this rule means a stationary attachment that has a primary purpose of pushing or leveling, for example, sand, dirt, snow, gravel, or manure. The term "rear-mounted or front-mounted blade" does not include mounted buckets or loaders that have a primary purpose of loading or digging.

m. Rotary cutter. “Rotary cutter” as used in this rule means an attachment used for mowing of grassy areas, pastures, and brush, but does not include attachments often referred to as “finishing mowers” and “mid-mount mowers.”

214.1(4) Taxable and nontaxable transactions. The following are nonexclusive examples of sales and leases of and services for farm machinery or equipment subject to or exempt from tax. Taxable services performed on farm machinery or equipment are subject to tax even when the replacement parts are exempt.

a. A lessor’s purchase of farm machinery or equipment is not subject to tax if the machinery or equipment is leased to a lessee who uses it directly and primarily in the production of agricultural products and if the lessee’s use of the machinery or equipment is otherwise exempt. To claim exemption from tax, the lessor does not need to make an exempt use of the machinery or equipment as long as the lessee uses the machinery or equipment for an exempt purpose. The lease of tangible personal property is treated as the sale of that property for the purposes of Iowa sales and use tax law because leases of tangible personal property are taxable retail sales of that property.

b. A lessor’s purchase of a snow blower, rear-mounted or front-mounted blade, or rotary cutter is not subject to tax if such item is leased to a lessee who uses the item in agricultural production and the item will be attached to an implement of husbandry.

c. The owner or lessee of farm machinery or equipment need not be a farmer as long as the machinery or equipment is directly and primarily used in the production of agricultural products and the owner or lessee and the machinery or equipment meet the other requirements of this rule. For example, a person who purchases an airplane designed for use in agricultural aerial spraying and who uses the airplane directly and primarily for agricultural production is entitled to the benefits provided under this rule even though that person is not the owner or occupant of the land where the airplane is used.

d. The owner or lessee of a snow blower, rear-mounted or front-mounted blade, or rotary cutter need not be a farmer as long as the snow blower, rear-mounted or front-mounted blade, or rotary cutter is used in agricultural production and the snow blower, rear-mounted or front-mounted blade, or rotary cutter is attached to an implement of husbandry.

e. The sale or lease, within Iowa, of any farm machinery, equipment, or replacement part for direct and primary use in agricultural production outside of Iowa is a transaction eligible for the exemption if the transaction is otherwise qualified for an exemption under this rule.

f. The sale or lease, within Iowa, of any snow blower, rear-mounted or front-mounted blade, or rotary cutter that is used, outside of Iowa, in agricultural production while attached to an implement of husbandry is a transaction eligible for the exemption, if the transaction is otherwise qualified for an exemption under this rule.

214.1(5) Auxiliary attachments. The following is a nonexclusive list of auxiliary attachments for which the sale or use in Iowa is exempt from tax: auxiliary hydraulic valves, cabs, coil tine harrows, corn head pickup reels, dry till shanks, dual tires, extension shanks, fenders, fertilizer attachments and openers, fold kits, grain bin extensions, herbicide and insecticide attachments, kit wraps, no-till coulters, quick couplers, rear-wheel assists, rock boxes, rollover protection systems, rotary shields, stalk choppers, step extensions, trash whips, upper beaters, silage bags, and weights.

This rule is intended to implement Iowa Code sections 423.3(8) and 423.3(11).

701—214.2(423) Farm implement repair of all kinds.

214.2(1) In general. Persons engaged in the business of repairing, restoring, or renovating implements, tools, machines, vehicles, or equipment used in the operation of farms, ranches, or acreages on which crops of all kinds are grown and on which livestock, poultry, or furbearing animals are raised or used for any purpose are selling a service subject to sales tax.

214.2(2) Installation not taxable. Those services relating to the installation of new parts or accessories that are not replacements are not taxable.

This rule is intended to implement Iowa Code section 423.2(6) “r.”

701—214.3(423) Irrigation equipment used in agricultural production. The sales price from the sale or rental of irrigation equipment used in agricultural production is exempt from tax. The term “irrigation equipment” includes, but is not limited to, circle irrigation systems and trickle irrigation systems, whether installed aboveground or belowground, as long as the equipment is sold to or rented by a contractor or farmer and the equipment is directly and primarily used in agricultural production. The term “agricultural production” is defined in rule 701—200.1(423).

This rule is intended to implement Iowa Code sections 423.3(12) and 423.3(13).

701—214.4(423) Sale of a draft horse. The sales price from the sale of draft horses, when they are purchased for use and used as draft horses, is not subject to tax. Draft horses are horses that pull loads, including loads in shows, or transport persons or property. For purposes of this rule, horses commonly known as Clydesdales, Belgians, Shires, and Percherons are draft horses. However, upon proper showing by the person or entity claiming exemption, the sales price exemption will be granted by the director for other breeds. However, the burden of proof lies with the person or entity claiming exemption.

This rule is intended to implement Iowa Code section 423.3(14).

701—214.5(423) Veterinary services. Veterinary services are not subject to sales tax. Purchases of food, drugs, medicines, bandages, dressings, serums, tonics, and the like that are used in treating livestock raised as part of agricultural production are exempt from tax. Where these same items are used in treating animals maintained as pets or for hobby purposes, sales tax is due. Purchases of equipment and tools used in the veterinary practice are subject to tax. Rule 701—214.17(423) explains the exemption for machinery or equipment used in livestock or dairy production that may be applicable to veterinarians, but should only be claimed with caution. A veterinarian must charge sales tax on any sales of tangible property or enumerated services, such as pet grooming, that are not part of professional veterinarian services.

This rule is intended to implement Iowa Code section 423.3(5).

701—214.6(423) Commercial fertilizer and agricultural limestone.

214.6(1) Commercial fertilizer. The sales price from the sales of commercial fertilizer is exempt from sales and use tax. Plant hormones are considered to be commercial fertilizer.

214.6(2) Agricultural limestone. The sales price from the sales of agricultural limestone is exempt from sales and use tax only if the purchaser intends to use the limestone for disease control, weed control, insect control, or health promotion of plants or livestock produced for market as part of agricultural production. Rule 701—200.1(423) contains definitions of “agricultural production” and “plants.” Sales of agricultural limestone used for other purposes are subject to sales tax. Examples of taxable sales include, but are not limited to, sales of agricultural limestone for application on a lawn, golf course, or cemetery.

This rule is intended to implement Iowa Code sections 423.3(4) and 423.3(5).

701—214.7(423) Breeding livestock. The sales price from the sale of agricultural livestock is exempt from tax only if at the time of purchase the purchaser intends to use the livestock primarily for breeding. The sales price from the sale of agricultural livestock that is capable of breeding, but will not be used for breeding or primarily for breeding, is not exempt from tax. However, the sales price from the sale of most nonbreeding agricultural livestock to farmers would be a sale for resale and exempt from tax. Rule 701—200.1(423) contains a definition of “livestock.”

EXAMPLE 1: A breeding service purchases a prize bull from a farmer. At the time of sale, the intent of the purchaser is to use the bull for breeding other cattle. The sale of the bull is exempt from tax even though three years later the breeding service sells the bull to a meat packer.

EXAMPLE 2: A farmer purchases dairy cows. To ensure production of milk over a sustained period of time, dairy cows must be bred to produce calves. If a farmer purchases dairy cows for the primary purpose of using them to produce milk and incidentally breeds them to ensure that this milk will be produced, the sale of the dairy cows to the farmer is not exempt from tax. If the farmer purchases the

dairy cows for the primary purpose of using them to produce calves and, incidental to that purpose, at times sells the milk that the cows produce, the sale of the dairy cows to the farmer is exempt from tax.

This rule is intended to implement Iowa Code section 423.3(3).

701—214.8(423) Domesticated fowl. The sales price from the sale of domesticated fowl for the purpose of providing eggs or meat is exempt from tax, whether purchased by a person engaged in agricultural production or not. Rule 701—200.1(423) contains a definition of the term “domesticated fowl.”

This rule is intended to implement Iowa Code section 423.3(3).

701—214.9(423) Agricultural health promotion items.

214.9(1) Definitions. For purposes of this rule, the following definitions apply:

“*Adjuvant*” means any substance that is added to an herbicide, a pesticide, or an insecticide to increase its potency.

“*Agricultural production*” means the same as defined in rule 701—200.1(423).

“*Food*” includes vitamins, minerals, other nutritional food supplements, and hormones sold to promote the growth of livestock.

“*Herbicide*” means any substance intended to prevent, destroy, or retard the growth of plants including fungi. The term includes preemergence, postemergence, lay-by, pasture, defoliant, and desiccant herbicides and fungicides.

“*Insecticide*” means any substance used to kill insects. Any substance used merely to repel insects is not an insecticide. Mechanical devices that are used to kill insects are not insecticides.

“*Livestock*” means the same as defined in rule 701—200.1(423). For the purposes of this rule, “livestock” includes domesticated fowl.

“*Medication*” includes antibiotics or other similar drugs administered to livestock.

“*Pesticide*” means any substance that is used to kill rodents or smaller vermin, other than insects, such as nematodes, spiders, or bacteria. For the purposes of this rule, a disinfectant is a pesticide. Excluded from the term “pesticide” is any substance that merely repels pests or any device, such as a rat trap, that kills pests by mechanical action.

“*Plants*” means the same as defined in rule 701—200.1(423).

“*Surfactant*” means a substance that is active on a surface.

214.9(2) Agricultural health promotion items and adjuvants. The sales price from the sale of herbicides, pesticides, insecticides, food, and medication that are to be used in disease, weed, or insect control or health promotion of plants or livestock produced as part of agricultural production for market is exempt from tax. Sales of adjuvants, surfactants, and other products that enhance the effects of herbicides, pesticides, or insecticides used in disease, weed, or insect control or health promotion of plants or livestock produced as part of agricultural production for market are also exempt from tax. The sales price from the sale of herbicides, pesticides, insecticides, food, medication, and products to any person not engaged in agricultural production for market are exempt if the property sold will be used for an exempt purpose, e.g., in disease control or on the behalf of another person engaged in agricultural production for market.

This rule is intended to implement Iowa Code sections 423.3(5) and 423.3(16).

701—214.10(423) Drainage tile. The sales price from the sale or installation of drainage tile that is to be used in disease control or weed control or in health promotion of plants or livestock produced as part of agricultural production for market is exempt from tax. In all other cases, drainage tile will be considered a building material and subject to tax under the provisions of Iowa Code section 423.2. Sales of the following materials associated with the installation of agricultural drainage tile are also exempt from tax: tile intakes, outlet pipes and outlet guards, aluminum and gabion structures, erosion control fabric, water control structures, and tile fittings.

This rule is intended to implement Iowa Code section 423.3.

701—214.11(423) Materials used for seed inoculations. The sales price from the sale of materials used for seed inoculations is exempt from sales tax. All forms of inoculation, whether for promotion of better growth and healthier plants or for the prevention or cure of plant mildew or disease of seeds and bulbs, are intended for the same general purpose and are therefore exempt.

This rule is intended to implement Iowa Code section 423.3.

701—214.12(423) Fuel used in agricultural production.

214.12(1) Definitions. For purposes of this rule, the following definitions apply:

“*Aquaculture*” means the same as defined in rule 701—200.1(423).

“*Fuel*” includes electricity.

“*Implement of husbandry*” means the same as defined in paragraph 214.1(1) “j.”

“*Livestock*” means the same as defined in rule 701—200.1(423) and includes domesticated fowl.

214.12(2) Exemptions.

a. Fuel used for livestock buildings. The sale of fuel used to provide heating or cooling for livestock buildings is exempt from tax.

b. Fuel used for flowering, ornamental, or vegetable plant production buildings.

(1) The sales price from the sale of fuel for heating or cooling greenhouses, buildings, or parts of buildings used for the production of flowering, ornamental, or vegetable plants intended for sale in the ordinary course of business is exempt from tax. See subparagraph (3) for the formula for calculating exempt use if a building is only partially used for growing flowering, ornamental, or vegetable plants.

(2) Fuel used in a flowering, ornamental, or vegetable plant production building for purposes other than heating or cooling (e.g., lighting) or for purposes other than direct use in flowering, ornamental, or vegetable plant production (e.g., heating or cooling office space) is not eligible for this exemption. Examples of nonexempt purposes for which a portion of a greenhouse might be used include, but are not limited to, portions used for office space; loading docks; storage of property other than flowering, ornamental, or vegetable plants; housing of heating and cooling equipment; and packaging flowering, ornamental, or vegetable plants for shipment.

(3) Calculating proportional exemption. It may be possible to calculate the amount of total fuel used in plant production by dividing the number of square feet of the greenhouse heated or cooled and used for raising flowering, ornamental, or vegetable plants by the number of square feet heated or cooled in the entire greenhouse. It may be necessary to alter this formula (by the use of separate metering, for example) if a greenhouse has a walk-in cooler and the cooler is used directly in flowering, ornamental, or vegetable plant production. Subrule 214.18(12) provides information about a seller’s and purchaser’s liability for sales tax.

EXAMPLE 1: Bill Brown’s herb farming operation has a separate greenhouse used to grow his herbs. All other aspects of his farm operations are conducted in other facilities. Because the greenhouse is used exclusively for raising flowering, ornamental, or vegetable plants, Bill Brown is able to claim exemption from sales tax on the cost of fuel used to heat and cool the greenhouse.

EXAMPLE 2: Martha Green’s greenhouse has a separate meter to track the electricity used only for heating or cooling. Her greenhouse is used partially for growing flowering, ornamental, or vegetable plants and partially for a nonexempt purpose. Martha Green is able to claim a proportional exemption from sales tax on the cost of fuel used to heat and cool her growing flowering, ornamental, or vegetable plants. Martha Green calculates her exempt amount by dividing the number of heated or cooled square feet of her greenhouse that are used for raising flowering, ornamental, or vegetable plants by the total number of square feet heated or cooled in the entire greenhouse.

Total square footage used for raising flowering, ornamental, or vegetable plants	=	800
Total square footage	=	1,000
TOTAL:	$800 \div 1,000$	= .80 or 80%

Thus, 80 percent of the cost of the fuel used to heat and cool Martha Green's greenhouse is exempt from sales tax.

c. Sales of fuel used for aquaculture. Sales of fuel used in the raising of agricultural products by aquaculture are exempt from tax.

d. Sales of fuel, gas, electricity, water, and heat consumed in implements of husbandry. The sale of fuel used in any implement of husbandry, whether self-propelled or not, is exempt from tax if the fuel is consumed while the implement is engaged in agricultural production. For example, the sale of fuel used not only in tractors or combines, but also used in implements that cannot move under their own power, is exempt from tax. The sale of fuel used in milk coolers and milking machines, grain dryers, and stationary irrigation equipment and in implements used to handle feed, grain, and hay and to provide water for livestock is exempt from tax even though these implements of husbandry would not ordinarily be considered self-propelled.

214.12(3) Partial use. If a building is used partially for an exempt agricultural purpose and partially for a nonexempt purpose, a proportional exemption from sales tax may be claimed based upon a percentage obtained by dividing the number of square feet of the building heated or cooled and used for an exempt agricultural purpose by the number of square feet heated or cooled in the entire building.

This rule is intended to implement Iowa Code section 423.3(6).

701—214.13(423) Water used in agricultural production. The sales price from the sale of water sold to farmers who are purchasing water for household use, sanitation, swimming pools, or other personal use is subject to sales tax. The sales price from the sale of water sold to farmers and others and used directly as drinking water for livestock production (including the production of domesticated fowl) is exempt from sales tax. When water is used for exempt purposes, as in livestock production, as well as for taxable purposes, the water may, when practical, be separately metered and separately billed to clearly distinguish the water consumed for exempt purposes from taxable purposes. When it is impractical to separately meter exempt water from taxable water, the purchaser may furnish to the seller a statement enabling the seller to determine the percentage of water subject to exemption. In the absence of proof to the contrary, the retailer of the water bills and collects tax on the first 5,000 gallons of water per month. The first 5,000 gallons of water per month will be considered to be for nonexempt use, and the balance will be considered to be used as part of agricultural production.

This rule is intended to implement Iowa Code section 423.3(5).

701—214.14(423) Hatcheries. The sales price from the sale of egg-type cockerel chicks, broiler chicks, and turkey poults is subject to tax. If sale of domestic poultry is for breeding, rule 701—214.7(423) provides information.

When pullets and poults are sold for production purposes, the sales price from the sale is exempt from tax.

This rule is intended to implement Iowa Code sections 423.2(1) and 423.3(3).

701—214.15(423) Sales by farmers. The sales price from the sale of grain, livestock, or any other farm or garden product by the producer thereof ordinarily constitutes a sale for resale, processing, or human consumption and is exempt from tax. In order to sell tangible personal property not otherwise exempt to ultimate consumers or users, farmers shall hold a permit and collect and remit sales tax on the sales price from their sales.

This rule is intended to implement Iowa Code sections 423.3(2), 423.3(51), and 423.3(57).

701—214.16(423) Sales of livestock (including domesticated fowl) feeds. The sales price from the sale of feed for any form of animal life when the product of the animals constitutes food for human consumption is exempt from tax. The sales price from the sale of feed sold for consumption by pets is subject to tax. The sales price from the sale of antibiotics that are administered as an additive to feed

or drinking water and vitamins and minerals that are sold for livestock (including domesticated fowl) is exempt from tax.

This rule is intended to implement Iowa Code section 423.3(16).

701—214.17(423) Farm machinery, equipment, and replacement parts used in livestock or dairy production.

214.17(1) The sales price from the sale of farm machinery, equipment, and replacement parts used in livestock or dairy production is exempt from sales and use tax.

214.17(2) Definitions and special provisions. For purposes of this rule, the following definitions and special provisions apply.

a. Machinery. The term “machinery” means major mechanical machines, or major components thereof, that contribute directly and primarily to the livestock or dairy production process. Usually, a machine is a large object with moving parts that performs work through the expenditure of energy, either mechanical (e.g., gasoline or other fuel) or electrical.

b. Equipment. The term “equipment” means tangible personal property (other than a machine) that is directly and primarily used in livestock or dairy production. Equipment may be characterized as property that performs a specialized function and that has no moving parts, or if the equipment does possess moving parts, its source of power is external to it. The following nonexclusive examples differentiate between machinery and equipment:

EXAMPLE 1: An auger places feed into a cattle feeder. The auger is a piece of machinery; the cattle feeder is a piece of equipment.

EXAMPLE 2: An electric pump is used to pump milk into a bulk milk tank. The electric pump is a piece of machinery; the bulk milk tank is equipment.

c. Property used in livestock or dairy production that is neither equipment nor machinery.

(1) Real property. The ground or the earth is not machinery or equipment. A building is not machinery or equipment. Therefore, tangible personal property that is sold for incorporation into the ground or a building in such a manner that the property will become a part of the ground or the building is taxable except for machinery and equipment. Generally, property incorporated into the ground or a building has become a part of the ground or the building if its removal would substantially damage the property, ground, or building or would substantially diminish the value of the property, ground, or building. Fence posts embedded in concrete, electrical wiring, light fixtures, fuse boxes, and switches are examples of property sold for incorporation into the ground or a building, respectively. For the purpose of the following example, assume that property is being sold to a contractor rather than a person engaged in livestock or dairy production. If the property is sold to a contractor, the retailer would be required to consider the property building material and charge the contractor sales tax upon the purchase price of the building material. If the property is building material, sale of the property is not exempt from Iowa sales tax. Rule 701—219.3(423) contains a characterization of building material and a list of specific examples of building material.

(2) Supplies. Supplies are neither machinery nor equipment. Tangible personal property is a farm supply if it is used up or destroyed by virtue of its use in livestock or dairy production or, because of its nature, can only be used once in livestock or dairy production. A light bulb is an example of a farm supply that is not machinery or equipment. Examples of farm supplies that could be mistaken for equipment and are not exempt from tax on other grounds can be found in subrule 214.19(4).

d. Hand tools. The term “hand tools” means tools that can be held in the hand or hands and that are powered by human effort. Hand tools specifically designed for use in livestock or dairy production are exempt from tax as equipment. Mechanical devices that are held in the hand and driven by electricity from some source other than human muscle power are, if they meet all other qualifications, exempt from tax as farm machinery.

e. “Directly used” in livestock or dairy production. To determine if machinery or equipment is “directly used” in livestock or dairy production, one must first ensure that the machinery or equipment is used during livestock or dairy production and not before that process has begun or after it has ended. Paragraph 214.17(2) “g” contains an explanation of when livestock or dairy production begins and ends.

(1) Definition. If the machinery or equipment is used in livestock or dairy production, “directly used” means the use is an integral and essential part of production as distinguished from use that is incidental or merely convenient to production or use that is remote from production. Machinery or equipment may be necessary to livestock or dairy production, but its use is so remote from production that it is not directly used in that production.

(2) Determination. In determining whether machinery or equipment is directly used, consideration should be given to the following factors:

1. The physical proximity of the machinery or equipment to other machinery or equipment clearly exempt as directly used in livestock or dairy production. The closer the machinery or equipment is to exempt machinery or equipment, the more likely it is that the machinery or equipment is directly used in livestock or dairy production.

2. The chronological proximity of the use of machinery or equipment in question to the use of machinery clearly exempt as directly used in livestock or dairy production. The closer the proximity of the machinery’s or equipment’s use within the production process to the use of exempt machinery or equipment, the more likely the use is direct rather than remote.

3. The active causal relationship between the use of the machinery or equipment in question and livestock or dairy production. The fewer intervening causes between the use of the machinery or equipment and the production of the product, the more likely it is that the machinery or equipment is directly used in production.

f. “Primarily used” in livestock or dairy production. Machinery or equipment is “primarily used” in livestock or dairy production based on the total time it is used in livestock or dairy production in comparison to the time it is used for other purposes. Any unit of machinery or equipment directly used in livestock or dairy production more than 50 percent of its total use time is eligible for exemption.

g. Beginning and end of livestock or dairy production. Livestock or dairy production begins with the purchase or breeding of livestock or dairy animals. Livestock or dairy production ceases when an animal or the product of an animal’s body (e.g., wool) has been transported to the point where it will be sold by the farmer or processed.

h. Machinery and equipment design. Farm machinery and equipment used in livestock or dairy production is eligible for exemption if specifically designed for use in livestock or dairy production. Farm machinery and equipment that are not specifically designed for use in livestock or dairy production, but are directly and primarily used in livestock or dairy production, are eligible for exemption with the exception of common or ordinary hand tools.

EXAMPLE: Farmer Jones raises livestock and must use fans to cool the animals. Farmer Jones buys electric fans designed for use in a residence, but uses them directly and primarily to cool the livestock. The fans’ use would be considered exempt.

i. Replacement parts. The term “replacement parts” means the same as defined in paragraph 214.1(2) “i.”

214.17(3) Examples of machinery and equipment directly used in livestock or dairy production.

a. Machinery and equipment used to transport or limit the movement of livestock or dairy animals (e.g., electric fence equipment, portable fencing, head gates, and loading chutes) are directly used in livestock or dairy production.

b. Machinery and equipment used in the conception, birth, feeding, and watering of livestock or dairy animals (e.g., artificial insemination equipment, portable farrowing pens, feed carts, and automatic watering equipment) are directly used in livestock or dairy production.

c. Machinery and equipment used to maintain healthful or sanitary conditions in the immediate area where livestock are kept (e.g., manure gutter cleaners, automatic cattle oilers, fans, and heaters if not real property) are directly used in livestock or dairy production.

d. Machinery and equipment used to test or inspect livestock during production are directly used in livestock or dairy production.

214.17(4) Taxable examples. The following are nonexclusive examples of machinery or equipment that would not be directly used in livestock or dairy production.

- a.* Machinery or equipment used to assemble, maintain, or repair other machinery or equipment directly used in livestock or dairy production (e.g., welders, paint sprayers, and lubricators).
- b.* Machinery or equipment used in farm management, administration, advertising, or selling (e.g., a computer used for record keeping, calculator, office safe, telephone, books, and farm magazines).
- c.* Machinery or equipment used in the exhibit of livestock or dairy animals (e.g., blankets, halters, prods, leads, and harnesses).
- d.* Machinery or equipment used in safety or fire prevention, even though the machinery or equipment is required by law.
- e.* Machinery or equipment for employee or personal use. Machinery or equipment used for the personal comfort, convenience, or use by a farmer, the farmer's family or employees, or persons associated with the farmer is not exempt from tax. Examples of such machinery and equipment include the following: beds, mattresses, blankets, tableware, stoves, refrigerators, and other equipment used in conjunction with the operation of a farm home or other facilities for farm employees.
- f.* Machinery or equipment used for heating, cooling, ventilation, and lighting of farm buildings generally.
- g.* Vehicles subject to registration.

214.17(5) The sales price, not including services, of the following machinery or equipment is exempt from tax regardless of whether the machinery or equipment remains tangible personal property after installation or is incorporated into the realty: auxiliary attachments that improve the performance, safety, operation, or efficiency of the machinery and equipment, including auger systems, curtains and curtain systems, drip systems, fan and fan systems, shutters, inlets, shutter or inlet systems, refrigerators, and replacement parts if all of the following conditions are met:

- a.* The implement, machinery, or equipment is directly and primarily used in livestock or dairy production.
- b.* The implement is not a self-propelled implement or implement customarily drawn or attached to self-propelled implements.
- c.* The replacement part is used in a repair or reconstruction of the exempt piece of farm machinery or equipment used in the production of agricultural products.

214.17(6) Auxiliary attachments exemption. Sales of auxiliary attachments that improve the performance, safety, operation, or efficiency of exempt machinery or equipment are exempt from tax. Sales of replacement parts for these auxiliary attachments are also exempt.

214.17(7) Seller's and purchaser's liability for sales tax. The seller is relieved of sales tax liability if the seller takes from the purchaser an exemption certificate stating that the purchase is of machinery and equipment meeting the requirements of this rule. The exemption certificate must be fully completed. If items purchased tax-free pursuant to an exemption certificate are used or disposed of by the purchaser in a nonexempt manner, the purchaser is solely and directly liable for sales tax and remits the tax to the department.

This rule is intended to implement Iowa Code sections 423.3(11) and 423.3(15).

701—214.18(423) Machinery, equipment, and replacement parts used in the production of flowering, ornamental, and vegetable plants.

214.18(1) The sales price from the sale of machinery, equipment, and replacement parts used in the production of flowering, ornamental, and vegetable plants is exempt from sales and use tax. The production of flowering, ornamental, or vegetable plants by a grower in a commercial greenhouse or at another location is considered to be a part of agricultural production and exempt from sales tax. The term "flowering, ornamental, or vegetable plants" does not include silvicultural products or fungi.

214.18(2) Definitions and special provisions. For purposes of this rule, the following definitions and special provisions apply.

- a. Machinery.* The term "machinery" means major mechanical machines, or major components thereof, that contribute directly and primarily to the flowering, ornamental, or vegetable plant production process. Usually, a machine is a large object with moving parts that performs work through the expenditure of energy, either mechanical (e.g., gasoline or other fuel) or electrical.

b. Equipment. The term “equipment” means tangible personal property (other than a machine) that is directly and primarily used in the flowering, ornamental, or vegetable plant production process. Equipment may be characterized as property that performs a specialized function that, of itself, has no moving parts, or if the equipment does possess moving parts, its source of power is external to it.

c. Property used in the flowering, ornamental, or vegetable plant production process that is neither equipment nor machinery.

(1) Real property. The ground or the earth is not machinery or equipment. A building is not machinery or equipment. Therefore, tangible personal property that is sold for incorporation into the ground or a building in such a manner that the property will become a part of the ground or the building is taxable except for machinery and equipment. Generally, property incorporated into the ground or a building has become a part of the ground or the building if its removal would substantially damage the property, ground, or building or would substantially diminish the value of the property, ground, or building. Fence posts embedded in concrete, electrical wiring, light fixtures, fuse boxes, and switches are examples of property sold for incorporation into the ground or a building, respectively. For the purpose of this example, assume that the property is being sold to a contractor rather than a person engaged in the flowering, ornamental, or vegetable plant production process. If the property is sold to a contractor, the retailer would be required to consider the property building material and charge the contractor sales tax upon the purchase price of this building material. If the property is building material, sale of the property is not exempt from Iowa sales tax. Rule 701—219.3(423) contains a characterization of building material and a list of specific examples of building material.

(2) Supplies. Supplies are neither machinery nor equipment. Tangible personal property is a supply if it is used up or destroyed by virtue of its use in the flowering, ornamental, or vegetable plant production process or, because of its nature, can only be used once in the flowering, ornamental, or vegetable plant production process. A light bulb is an example of a supply that is not machinery or equipment. Subrule 214.19(4) provides examples of supplies that could be mistaken for equipment and are not exempt from tax on other grounds.

d. Hand tools. The term “hand tools” means tools that can be held in the hand or hands and that are powered by human effort. Hand tools specifically designed for use in the flowering, ornamental, or vegetable plant production process are exempt from tax as equipment. Mechanical devices that are held in the hand and driven by electricity from some source other than human muscle power are, if they meet all other qualifications, exempt from tax.

e. “Directly used” in the flowering, ornamental, or vegetable plant production process. To determine if machinery or equipment is “directly used” in the flowering, ornamental, or vegetable plant production process, one must first ensure that the machinery or equipment is used during the flowering, ornamental, or vegetable plant production process and not before that process has begun or after it has ended. Paragraph 214.18(2)“g” contains an explanation as to when the flowering, ornamental, or vegetable plant production process begins and ends.

(1) Definition. If the machinery or equipment is used in the flowering, ornamental, or vegetable plant production process, “directly used” means the use is an integral and essential part of production as distinguished from use that is incidental or merely convenient to production or use that is remote from production. Machinery or equipment may be necessary to the flowering, ornamental, or vegetable plant production process, but its use is so remote from production that it is not directly used in that production.

(2) Determination. In determining whether machinery or equipment is directly used, consideration should be given to the following factors:

1. The physical proximity of the machinery or equipment to other machinery or equipment clearly exempt as directly used in the flowering, ornamental, or vegetable plant production process. The closer the machinery or equipment is to exempt machinery or equipment, the more likely it is that the machinery or equipment is directly used in the flowering, ornamental, or vegetable plant production process.

2. The chronological proximity of the use of machinery or equipment in question to the use of machinery clearly exempt as directly used in the flowering, ornamental, or vegetable plant production process. The closer the proximity of the machinery’s or equipment’s use within the production process is to the use of exempt machinery or equipment, the more likely the use is direct rather than remote.

3. The active causal relationship between the use of the machinery or equipment in question and the flowering, ornamental, or vegetable plant production process. The fewer intervening causes between the use of the machinery or equipment and the production of the product, the more likely it is that the machinery or equipment is directly used in production.

f. “Primarily used” in flowering, ornamental, or vegetable plant production. Machinery or equipment is “primarily used” in flowering, ornamental, or vegetable plant production based upon the total time it is used in flowering, ornamental, or vegetable plant production in comparison to the time it is used for other purposes. Any unit of machinery or equipment directly used in flowering, ornamental, or vegetable plant production more than 50 percent of its total use time is eligible for exemption.

g. Beginning and end of flowering, ornamental, or vegetable plant production. Flowering, ornamental, or vegetable plant production begins with the purchase of seeds or starter plants. Flowering, ornamental, or vegetable plant production ceases when a plant has grown to the size or weight at which it will be prepared for shipment to the destination where it will be marketed.

h. Machinery and equipment design. Machinery and equipment used in flowering, ornamental, or vegetable plant production are eligible for exemption if they were specifically designed for use in flowering, ornamental, or vegetable plant production. Machinery and equipment that are not specifically designed for use in flowering, ornamental, or vegetable plant production, but are directly and primarily used in flowering, ornamental, or vegetable plant production, are eligible for exemption with the exception of common or ordinary hand tools.

EXAMPLE: Bob Jones raises tulips and must use a thermometer to monitor the temperature in his greenhouse. Bob Jones buys a thermometer designed for use in a residence but uses it directly and primarily to monitor the temperature in his greenhouse. The thermometer’s use would be considered exempt.

i. Replacement parts. The term “replacement parts” means the same as defined in paragraph 214.1(2) “i.”

214.18(3) Examples of machinery and equipment directly used in flowering, ornamental, or vegetable plant production can be found in subrule 214.19(3).

214.18(4) Taxable examples. The following are nonexclusive examples of machinery or equipment that would not be directly used in flowering, ornamental, or vegetable plant production.

a. Machinery or equipment used to assemble, maintain, or repair other machinery or equipment directly used in flowering, ornamental, or vegetable plant production.

b. Machinery or equipment used in the growing operation’s management, administration, advertising, or selling (e.g., calculators, office safes, telephones, books, and plant magazines).

c. Machinery or equipment used in the exhibit of flowering, ornamental, or vegetable plants.

d. Machinery or equipment used in safety or fire prevention, even though the machinery or equipment is required by law.

e. Machinery or equipment for employee or personal use. Machinery or equipment used for the personal comfort, convenience, or use by a grower, the grower’s family or employees, or persons associated with the grower is not exempt from tax. Examples of such machinery and equipment include the following: beds, mattresses, blankets, tableware, stoves, refrigerators, and other equipment used in conjunction with the operation of a grower’s home, or other facilities for the grower’s employees.

f. Machinery or equipment used for heating, cooling, ventilation, and lighting of office, retail, or display buildings where production does not occur.

g. Vehicles subject to registration.

214.18(5) Packing material used in flowering, ornamental, or vegetable plant production. The sales price for the sale of property that is a container, label, carton, pallet, packing case, wrapping, baling wire, twine, bag, bottle, shipping case, or other similar article or receptacle sold for use in the production of flowering, ornamental, or vegetable plants in commercial greenhouses or other places that sell such items in the ordinary course of business is not subject to sales tax. Containers and packaging materials include but are not limited to boxes, trays, labels, sleeves, tape, and staples.

214.18(6) Self-propelled implements. The sales price from the sale of self-propelled implements or implements customarily drawn or attached to self-propelled implements and replacement parts for the

same is exempt from tax if the implements are used directly and primarily in the production of flowering, ornamental, or vegetable plants in commercial greenhouses or elsewhere. Exempt implements include, but are not limited to, forklifts used to transport pallets of flowering, ornamental, or vegetable plants, wagons containing sterilized soil, and tractors used to pull these items.

214.18(7) Machinery and equipment used in flowering, ornamental, or vegetable plant production that are not self-propelled or attached to self-propelled machinery and equipment are exempt from tax. Rule 701—214.19(423) includes nonexclusive examples of machinery and equipment that are not self-propelled or attached to self-propelled machinery and equipment and that are directly and primarily used in flowering, ornamental, or vegetable plant production.

214.18(8) Fuel used in plant production is discussed in paragraph 214.12(2) “b.”

214.18(9) The sales price from the sale of water used in the production of plants is exempt from tax. If water is not separately metered, the plants’ grower must determine by use of a percentage the portion of water used for a taxable purpose and the portion used for an exempt purpose. Nonexclusive examples of taxable usage include rest rooms, sanitation, lawns, and vehicle wash.

214.18(10) Agricultural health promotion items. The sales price from the sale to a commercial greenhouse of fertilizer, limestone, herbicides, pesticides, insecticides, plant food, and medication for use in disease, weed, and insect control or in other health promotion of flowering, ornamental, or vegetable plants is exempt from tax. For the purposes of this rule, a virus, bacterium, fungus, or insect that is purchased for use in killing insects or other pests is an insecticide or pesticide. Rule 701—214.9(423) contains more information regarding these exemptions.

214.18(11) Miscellaneous exempt and taxable plant sales.

a. Sales of pots, soil, seeds, bulbs, and starter plants for use in plant production are not the sale of machinery or equipment, but can be sales for resale and exempt from tax if the pots and soil are sold with the final product or become the finished product.

b. The sales price from the sale of portable buildings that will be used to display plants for retail sales is taxable.

c. The sales price from the sale of whitewash that will be painted on greenhouses to control the amount of sunlight entering those greenhouses is subject to tax as the sale of a supply rather than exempt from tax as a sale of equipment.

214.18(12) Seller’s and purchaser’s liability for sales tax. The seller is to be relieved of sales tax liability if the seller receives from the purchaser an exemption certificate stating that the purchase is of machinery and equipment meeting the requirements of this rule. The exemption certificate must be fully completed. If items purchased tax-free pursuant to an exemption certificate are used or disposed of by the purchaser in a nonexempt manner, the purchaser is solely and directly liable for the sales tax and remits the tax to the department.

This rule is intended to implement Iowa Code sections 423.3(11) and 423.3(15).

701—214.19(423) Nonexclusive lists. The following tables list items that are taxable or exempt.

214.19(1) *Exempt for agricultural production.*

adjuvants	irrigation equipment
alternators and generators*	kill cones
augers*	limestone, agricultural
balers	manure spreaders
bale transportation equipment	mowers, hay
baling wire and binding twine	oil filters
batteries for exempt machinery	oil pumps
blowers, grain dryer	packing materials
brush hogs*	pesticides
combines, cornheads, platforms	pickers

conveyors, temporary or portable*	plants (seeds)
corn pickers	planters
crawlers, tractor	plows
cultipackers	piston rings
cultivators	pruning and picking equipment*
discs	replacement parts
draft horses	rock pickers
drags	rollers*
drainage pipe and tile	rotary blade mowers; not lawn mowers
dusters*	rotary hoes
ensilage cutters	seeders
ensilage forks and trucks (a pickup does not qualify)	seed cleaners*
farm wagons and accessories	seed planters
fertilizer, agricultural	seeds
fertilizer spreaders	self-propelled implements
filters	shellers*
forage harvesters, boxes	silo blowers, unloaders*
fuel for grain drying or other agricultural production	sowers
gaskets	spark plugs for exempt machinery
grain augers, portable*	sprayers*
grain drills	spreaders
grain dryer, heater and blower only	sprinklers
grain planters	subsoilers
harrows	surfactants
hay conditioners	tillers
hay hooks	tires for exempt machinery
hay loaders	tractor chains
herbicides	tractors, farm
implements customarily drawn or attached to a self-propelled implement	tractor weights
insecticides	vegetable harvesters
	weeders*

*Exempt if drawn or attached to a self-propelled farm implement and directly and primarily used in agricultural production or, if portable, used directly and primarily in agricultural production.

214.19(2) *Exempt for dairy and livestock production.*

adjuvants	heaters, portable
alternators and generators ¹	hog feeders, portable
artificial insemination equipment	hog ringers ³
auger systems	hoof trimmers, portable ³
automatic feeding systems, portable	hypodermic syringes and needles, nondisposable
batteries for exempt machinery	implements customarily drawn or attached to a self-propelled implement

barn ventilators	incubators, portable
bedding materials ²	inlets and inlet systems
breeding stock, agricultural	inoculation materials
bulk feeding tanks, portable	insecticides
bulk milk coolers and tanks, portable	kill cones
calf weaners and feeders, portable	livestock feeding, watering and handling equipment, portable
cattle feeders, portable	loading chutes, portable
chain and rope hoists, portable ¹	manure brooms, portable ³
chicken pickers, plucking equipment	manure handling equipment, including front-end and rear-end loaders, portable ³
chick guards	manure scoops, portable ¹
clipping machines, portable ³	medications
conveyors, temporary or portable ¹	milk coolers, portable
cow stalls, portable	milking equipment, including cans, etc. ³
cow ties, portable	milking machines
cow watering and feeding bowls, portable	milk strainers and strainer disks, if not disposable
crawlers, tractor	milk tanks, portable
currying and oiling machines, portable	pesticides
curtains and curtain systems	poultry feeders, portable
dehorner	poultry founts, portable
domestic fowl	poultry litters, portable
draft horses	poultry nests, portable
drip systems	refrigerators
electric fence equipment, portable	replacement parts
fans and fan systems	sawdust
farm wagons and accessories	self-propelled implements
farrowing houses, crates, stalls, portable	shutters and shutter systems
feed	space heaters, portable
feed bins, portable	specialized flooring, portable
feed carts, portable	sprayers ¹
feed elevators, portable	squeeze chutes, stalls, portable
feed grinders, portable	stanchions, portable
feed scoops ³	surfactants
feed tanks, portable	tires for exempt machinery
feeder chutes, portable	thermometers ³
feeders, portable	tractor chains
fence and fencing supplies, temporary or portable	tractors, farm
foggers	tractor weights
fuel to heat or cool livestock buildings	vacuum coolers

gaskets	ventilators
gates, portable	water filters, heaters, pumps, softeners, portable
gestation stalls, portable	waterers/watering tanks, portable
grooming equipment, portable ³	weaners
head gates, portable	wood chips ²

¹Exempt if drawn or attached to a self-propelled farm implement and directly and primarily used in dairy or livestock production or, if portable, used directly and primarily in dairy or livestock production.

²Exempt when used as livestock and poultry bedding.

³Designed for farm use.

214.19(3) *Exempt for flowering, ornamental, or vegetable plant production.*

air-conditioning pads	greenhouse monorail systems*
airflow control tubes	greenhouse thermometers
atmospheric CO ₂ control and monitoring equipment	handcarts used to move plants
backup generators	lighting that provides artificial sunlight
bins holding sterilized soil	overhead heating, lighting, and watering systems*
control panels for heating and cooling systems*	overhead tracks for holding potted plants*
coolers used to chill plants*	plant tables
cooling walls	plant watering systems
equipment used to control water levels for subirrigation	portable buildings used to grow plants
fans used for cooling and ventilating*	seeding and transplanting machines
floor mesh for controlling weeds	soil pot and soil flat filling machines
germination chambers	steam generators for soil sterilization*
greenhouse boilers*	warning devices that monitor excess heat or cold
greenhouse netting or mesh when used for light and heat control	watering booms

*Exempt if not real property. “Real property” is defined in Iowa Code section 4.1(13) as “lands, tenements, hereditaments, and all rights thereto and interests therein, equitable as well as legal.” More information can be found in 701—Chapter 219.

214.19(4) *Taxable even if used in agricultural production.*

additives	lubricants and fluids
air compressors	lumber*
air conditioners, unless a replacement part for exempt machinery	marking chalk
air tanks	mops
antifreeze	motor oils
axes	nails
barn cleaner, permanent	office supplies
baskets	oxygen
belt dressing	packing room supplies
bins, permanent^	paint and paint sprayers
brooms	pliers

buckets	posthole diggers, hand tool
building materials* and supplies	poultry brooders, permanent
burlap cleaners	poultry feeders, permanent
cattle feeders, permanent	poultry nests, permanent
cement [#]	pruning tools
chain saws	pumps for household or lawn use
cleaning brushes	radios, unless a replacement part for exempt machinery
cleansing agents and materials	refrigerators for home use
computers (including laptop), for personal use	repair tools
computer software	road maintenance equipment
construction tools	road scraper
concrete [#]	roofing
conveyors, permanent	sanders
cow ties, permanent	scrapers
ear tags	screwdrivers
fence, posts, wire, permanent	shingles
field toilets	shovels
fire prevention equipment	silos
freon	snow fence, unless portable and used directly in dairy and livestock production
fuel additives	snow plows and snow equipment
fuel tanks and pumps	space heaters, permanent
garden hoses and rakes	specialized flooring, permanent
glass	sprinklers, permanent
grain tanks, permanent ^{*^}	stalls, permanent
grease	staples
grease guns	stanchions, permanent
hammers	storage tanks
hog rings	tarps
hydraulic fluids	tiling machinery and equipment
hypodermic syringes, disposable	tractors, garden
lamps	welders
lanterns	wheel barrows
light bulbs (for household use)	wrenches

* Contractors and sponsors that purchase building materials, other than grain bin materials, are responsible for paying sales tax to the vendor or supplier or accruing and remitting use tax on those materials.

^ Does not include grain bins used to hold loose grain for drying or storage.

Does not include cement or concrete used in pads or foundations under grain bins.

This rule is intended to implement Iowa Code sections 423.3(6), 423.3(8) and 423.3(11).

701—214.20(423) Grain bins. The Iowa Code exempts from sales and use tax the sales price from the sale of a grain bin, including material or replacement parts used to construct or repair a grain bin. “Grain bin” is defined by Iowa Code section 423.3(16A). Grain bins are real property, and grain bin materials are building materials as that term is used in rule 701—219.3(423).

214.20(1) *Property considered to be a grain bin or material used to construct a grain bin.* In general, materials that are permanently attached to a grain bin and are required to hold loose grain for drying or storage are used to construct a grain bin and thus exempt from sales and use tax. This generally does not include equipment used to move loose grain into or out of a grain bin. The following lists of exempt or taxable property are not exhaustive.

a. Exempt property:

- (1) Grain bins, including hopper bins.
- (2) Corrugated metal or other similar material for the sides or roof of a grain bin.
- (3) Steps, ladders, or staircases permanently attached to a grain bin.
- (4) Structural support towers for a grain bin or for steps, ladders, or staircases providing access to a grain bin.

(5) Catwalks.

(6) Roof vents permanently attached to a grain bin.

(7) Grain bin flooring and floor supports.

(8) Concrete pad or foundation under a grain bin.

(9) Stirring equipment permanently attached in a grain bin.

(10) Fans permanently attached to a grain bin.

(11) Temperature sensors or temperature cables permanently attached in a grain bin.

(12) Spreaders permanently attached in a grain bin.

(13) Sweeps or augers permanently attached in a grain bin.

(14) Bolts and other builders' hardware permanently attached to a grain bin.

(15) Controls and devices to operate the above-listed property.

(16) Motors for the above-listed property.

(17) Replacement parts for the above-listed property.

b. Taxable property:

(1) Bucket elevators.

(2) Distributors.

(3) Receiving stations, including drag conveyors and dump pits.

(4) Pneumatic or air systems.

(5) Conveyors, including chain conveyors, belt conveyors, and drag conveyors.

(6) Anchors, bin jacks, or other construction equipment used to assemble, construct, repair, or replace a grain bin or part of a grain bin.

(7) Samplers.

(8) Scales or weighers.

(9) Other items that remain tangible personal property and are not permanently attached to a grain bin.

214.20(2) *Primarily used to hold loose grain for drying or storage.* Property is deemed to be "primarily used to hold loose grain for drying or storage" if it is used more than 50 percent of the time to hold loose grain for drying or storage.

214.20(3) *Claiming the exemption.*

a. A contractor must provide an exemption certificate to its supplier when purchasing grain bins, grain bin materials, or grain bin replacement parts in order to purchase them free from sales tax. The contractor entering into a construction contract with a sponsor to erect a grain bin or entering into a contract to repair a grain bin must also obtain an exemption certificate from the sponsor of the construction/repair contract to avoid accruing and remitting use tax on the grain bins, grain bin materials, and the grain bin replacement parts that were purchased tax-free from the contractor's supplier.

b. The contractor must accrue consumer's use tax on the purchase price of the grain bins, grain bin materials, and grain bin replacement parts unless the contractor obtains an exemption certificate from the sponsor of the construction or repair contract. If the grain bin materials or replacement parts are not used in an exempt manner or if an exemption certificate is not obtained, it is the contractor's responsibility to accrue and remit use tax. The contractor must not charge sales tax to the sponsor of a construction

or repair contract because those materials and replacement parts remain building materials used in the performance of a construction contract.

EXAMPLE 1: Company A is in the business of constructing and repairing grain bins. Company A regularly purchases grain bin materials and replacement parts from its supplier. Company A may provide to its supplier an exemption certificate pursuant to Iowa Code section 423.3(16A) so that the materials and replacement parts are purchased tax-free.

A person, also known as a sponsor, enters into a construction contract with Company A to construct a grain bin on the sponsor's property. The sponsor provides an exemption certificate to Company A also pursuant to Iowa Code section 423.3(16A). Company A may now fulfill the construction contract without accruing and remitting use tax on the grain bin materials purchased from its supplier tax-free.

EXAMPLE 2: Assume the same facts as in Example 1, except that Company A does not provide an exemption certificate to its supplier when it purchases grain bin materials and replacement parts. The supplier must charge and collect from Company A sales tax on the full sales price of the grain bin materials and replacement parts.

The sponsor enters into a construction contract with Company A to erect a grain bin. Whether or not the sponsor provides an exemption certificate to Company A pursuant to Iowa Code section 423.3(16A), Company A may now fulfill the construction contract without accruing and remitting use tax on the grain bin materials because Company A paid sales tax on the sales price of the grain bin materials when it purchased them from its supplier.

EXAMPLE 3: Assume the same facts as in Example 2. The sponsor enters into a construction contract with Company A to erect a grain bin and provides an exemption certificate to Company A pursuant to Iowa Code section 423.3(16A). Company A may now file a refund claim with the department requesting that the department refund the sales tax that Company A paid to its supplier when it purchased the grain bin materials used in fulfilling the construction contract with the sponsor. Alternatively, Company A may claim a credit on its sales tax return(s) equal to the amount of sales tax paid to its supplier when it purchased the grain bin materials used in fulfilling the construction contract with the sponsor. The burden is on Company A to prove that the building materials for which the credit or refund is claimed were used in erecting a grain bin.

EXAMPLE 4: Assume the same facts as in Example 1, except that the sponsor does not provide an exemption certificate to Company A. Company A must now accrue and remit use tax on the cost of the materials used in fulfilling this construction contract.

EXAMPLE 5: Assume the same facts as in Example 1, except that the sponsor enters into a construction contract with Company A for the construction of a structure that is not a grain bin. Company A uses the materials that it had purchased tax-free from its supplier to fulfill this contract. Company A must now accrue and remit use tax on the cost of the materials used in fulfilling this construction contract.

EXAMPLE 6: Assume the same facts as in Example 1, except that the sponsor enters into a contract with Company A for the repair of a structure that is not a grain bin. Company A uses the materials that it had purchased tax-free from its supplier to fulfill this contract. When invoicing the sponsor, Company A must separately itemize the materials and the labor charges incurred in fulfilling this repair contract, and the sales price of the materials included on the invoice must include any mark-up. Company A is obligated to charge and collect sales tax on the materials and labor charges listed on the invoice.

EXAMPLE 7: Assume the same facts as in Example 1 except that, in addition to constructing the grain bin, the contractor provides and installs property, such as portable equipment, that remains tangible personal property after installation. As with the grain bin, grain bin materials, and grain bin replacement parts, the contractor purchases the portable equipment tax-free, not because it is exempt under this subrule, but because it is a purchase for resale. Unless the portable equipment qualifies for another exemption (such as in rule 701—214.1(423)), even if the contractor obtains an exemption certificate from the sponsor for the grain bin, grain bin materials, and replacement parts, the contractor must charge sales tax to the sponsor because the portable equipment remains tangible personal property and the contractor sells that equipment to the sponsor at retail.

This rule is intended to implement Iowa Code section 423.3.

701—214.21(423) Warehousing of raw agricultural products.

214.21(1) *In general.* The sales price on the warehousing of raw agricultural products is subject to sales tax unless the warehousing of raw agricultural products is storage in transit and has a destination outside of Iowa, regardless of whether the raw agricultural products originated within or outside of Iowa. Because the tax imposed by Iowa Code section 423.2(6) “ax” is imposed on the warehousing and not the sale of raw agricultural products, the interstate commerce exceptions found in Iowa Code section 423.3 do not apply.

214.21(2) *Definition.* For purposes of this rule:

“*Raw agricultural products*” includes but is not limited to corn, beans, oats, milo, fruits, vegetables, animal semen, and like items that have not been subjected to any form of processing. For purposes of this rule, grain drying is not considered processing.

214.21(3) *Other charges.* Other charges relating to warehousing of raw agricultural products may be subject to sales tax when separately invoiced. 701—Chapter 206 contains more information about bundled transactions.

214.21(4) *Transit warehouses.* The warehousing of raw agricultural products to be delivered within Iowa is subject to sales tax, while the warehousing of those products placed into interstate commerce is not subject to sales tax.

a. Formula. Transit warehouses may compute the tax on warehousing fees based upon a formula consisting of a numerator that is the quantity of raw agricultural products housed at the warehouse with intended intrastate delivery in Iowa and a denominator that is the total quantity of raw agricultural products housed in the warehouse.

b. Definition. For purposes of this rule:

“*Transit warehouses*” are those warehouses where raw agricultural products in bulk quantities are transported to and then shipped to different locations at different times.

c. Numerator. Raw agricultural products picked up at the warehouse or delivered to a location in Iowa must be included in the numerator, even if the products may be or are subsequently delivered to a common carrier for shipment outside of Iowa.

d. Information used to calculate tax. The information used in the formula for the computation of tax on storage fees must be, in most cases, supplied by the principal storing the products in the warehouse. The warehouse is responsible for acquiring and verifying the information used in the formula with the principal at least once every 90 days.

214.21(5) *Exemptions.* Warehousing service will not be subject to sales tax if a contract for the warehousing of raw agricultural products is with a tax-certifying or tax-levying body of the state of Iowa; any instrumentality of the state, county, or municipal government; the federal government or its instrumentalities; a tribal government as defined in Iowa Code section 216A.161; or an agency or instrumentality of a tribal government if used for public purposes.

a. Consignment to federal government. Fees for the warehousing of raw agricultural products placed into storage by a producer that are later consigned to the federal government under a loan agreement are subject to sales tax.

b. Federal government activity. Warehousing of raw agricultural products is exempt from sales tax only if the federal government makes payment to the warehouse for warehousing and the federal government actually owns the products or goods during the time the products or goods are warehoused.

This rule is intended to implement Iowa Code sections 423.2(6) “ax” and 423.3(31).

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 701—Chapter 215
“Exemptions Primarily Benefiting Manufacturers and Other Persons Engaged in Processing”

Iowa Code section(s) or chapter(s) authorizing rulemaking: 421.14, 422.68, and 423.42
State or federal law(s) implemented by the rulemaking: Iowa Code sections 423.3(47) through 423.3(53), 423.3(82), 423.3(92), 423.3(93), 423.3(95), 423.4(7), and 423.4(8)

Public Hearing

A public hearing at which persons may present their views orally or in writing will be held as follows:

November 8, 2023
9 a.m. to 12 noon

Via video/conference call:
meet.google.com/msc-ekdk-xws
PH: 1.262.864.1688
PIN: 672 555 995#

Public Comment

Any interested person may submit written or oral comments concerning this Regulatory Analysis. Written or oral comments in response to this Regulatory Analysis must be received by the Department of Revenue no later than 4:30 p.m. on the date of the public hearing. Comments should be directed to:

Nick Behlke
Department of Revenue
Hoover State Office Building
P.O. Box 10457
Des Moines, Iowa 50306-3457
Phone: 515.336.9025
Email: nick.behlke@iowa.gov

Purpose and Summary

The purpose of this proposed rulemaking is to rescind and readopt Chapter 215, which describes the Department’s interpretation of the underlying statutes to aid the public in understanding the taxability and exemption provisions and processes that are primarily applicable to taxpayers engaged in processing and manufacturing. The Department proposes revisions to the rules to provide clarification and to remove obsolete, unnecessary, and duplicative statutory language. The Department also renumbered some rules due to other changes and for organizational reasons.

Analysis of Impact

1. Persons affected by the proposed rulemaking:
 - Classes of persons that will bear the costs of the proposed rulemaking:
The proposed rulemaking does not impose costs beyond what is imposed by the underlying statutes.
 - Classes of persons that will benefit from the proposed rulemaking:
The public, especially those taxpayers engaged in processing and manufacturing, will benefit from this proposed rulemaking because it provides guidance about the scope and applicability of specific exemptions on certain purchases.
2. Impact of the proposed rulemaking, economic or otherwise, including the nature and amount of all the different kinds of costs that would be incurred:
 - Quantitative description of impact:

There is no economic impact associated with the proposed rulemaking beyond what is contained in statute.

- Qualitative description of impact:

The proposed rulemaking reduces uncertainty about the applicability of certain exemptions related to processing and manufacturing, and the failure to adopt the rules would lead to confusion, questions to the Department, and the potential collection of tax on exempt purchases.

3. Costs to the State:

- Implementation and enforcement costs borne by the agency or any other agency:

There are no costs to the Department to implement the proposed rulemaking beyond what would otherwise be required to administer the statutes.

- Anticipated effect on state revenues:

There is no anticipated effect on state revenues, although the rules provide clarification about certain exempt sales leading to a lower likelihood that tax will be collected and remitted on exempt sales.

4. Comparison of the costs and benefits of the proposed rulemaking to the costs and benefits of inaction:

The cost of inaction would be failing to update the chapter to provide clarification and to remove unnecessary, obsolete, and duplicative statutory language. The benefit of the proposed rulemaking is to provide additional certainty and reduce confusion about the applicability of exemptions to purchases by the public, especially those taxpayers engaged in processing and manufacturing.

5. Determination whether less costly methods or less intrusive methods exist for achieving the purpose of the proposed rulemaking:

The proposed rulemaking is not costly or intrusive, and its purpose is to provide guidance on the applicability of specific exemptions to aid the public, with a focus on those that are engaged in processing and manufacturing. The Department considered the option of not readopting Chapter 215 and determined that the rules provide guidance and useful clarification to the public, especially those that are engaged in processing and manufacturing.

6. Alternative methods considered by the agency:

- Description of any alternative methods that were seriously considered by the agency:

The Department considered the option of not readopting Chapter 215; however, it determined the rules provide helpful guidance and useful clarification to retailers and the public beyond what is provided by the underlying statutes.

- Reasons why alternative methods were rejected in favor of the proposed rulemaking:

The Department determined that proceeding without rules would lead to confusion and the possibility of the overcollection of tax on exempt sales.

Small Business Impact

If the rulemaking will have a substantial impact on small business, include a discussion of whether it would be feasible and practicable to do any of the following to reduce the impact of the rulemaking on small business:

- Establish less stringent compliance or reporting requirements in the rulemaking for small business.

- Establish less stringent schedules or deadlines in the rulemaking for compliance or reporting requirements for small business.

- Consolidate or simplify the rulemaking's compliance or reporting requirements for small business.

- Establish performance standards to replace design or operational standards in the rulemaking for small business.

- Exempt small business from any or all requirements of the rulemaking.

If legal and feasible, how does the rulemaking use a method discussed above to reduce the substantial impact on small business?

The proposed rulemaking does not have a substantial impact on small business since it does not make any distinctions and does not impose any requirements on businesses, other than what is imposed by the underlying statutes.

Text of Proposed Rulemaking

ITEM 1. Rescind 701—Chapter 215 and adopt the following **new** chapter in lieu thereof:

CHAPTER 215

EXEMPTIONS PRIMARILY BENEFITING MANUFACTURERS AND OTHER PERSONS
ENGAGED IN PROCESSING

701—215.1 Reserved.

701—215.2(423) Carbon dioxide in a liquid, solid, or gaseous form, electricity, steam, and taxable services used in processing. An expanded definition of “processing” is allowed to manufacturers of food or food ingredients using carbon dioxide in a liquid, solid, or gaseous form, electricity, steam, and taxable services. For the purposes of this rule, the rental or leasing of tangible personal property is treated as the furnishing of a taxable service and not as the sale of tangible personal property.

215.2(1) “Food or food ingredients” means the same as defined in Iowa Code section 423.3(49) “b.” This means that for purposes of this exemption, “food or food ingredients” means the same as “food and food ingredients” as defined in Iowa Code section 423.3(57) “d” and implemented by rule 701—220.3(423) but also includes tangible personal property that could be sold for ingestion or chewing by humans but is sold for another use.

EXAMPLE 1: Manufacturer A produces gelatin that qualifies as a food or food ingredient. Manufacturer A only sells the gelatin to a cosmetics manufacturer. The sales price of any carbon dioxide in a liquid, solid, or gaseous form, electricity, steam, and taxable services used by Manufacturer A to produce the gelatin is exempt from sales tax even though the gelatin was not sold for human consumption.

EXAMPLE 2: Manufacturer B produces two types of gelatin products. Product 1 is manufactured at a quality such that it may be used for technical purposes, such as an ingredient in wood glue, but humans could not consume Product 1 safely. Product 2 is manufactured at a quality such that humans could safely eat it, though it can also be sold for technical purposes like Product 1. Product 1 is not a food or food ingredient. Product 2 is a food or food ingredient.

EXAMPLE 3: Manufacturer C produces alcohol, all of which qualifies as a food or food ingredient. Manufacturer C sells one-third of its product to vodka Manufacturer V, one-third to fuel ethanol Manufacturer F, and one-third to perfume Manufacturer P. The sales price of any carbon dioxide in a liquid, solid, or gaseous form, electricity, steam, and taxable services used by Manufacturer C to produce the alcohol is exempt from sales tax regardless of whether Manufacturer C sells the alcohol to Manufacturer V, F, or P.

Manufacturer V’s product is food-grade vodka sold at grocery and convenience stores. Manufacturer V may claim exemption for the same inputs used in producing its vodka as Manufacturer C.

Manufacturer F’s product is only sold to be used in motor vehicles and is harmful to humans if consumed. Manufacturer F cannot claim exemption under Iowa Code section 423.3(49) for any carbon dioxide in a liquid, solid, or gaseous form, electricity, steam, and taxable services used to produce its ethanol fuel. Manufacturer F may qualify for exemptions provided under other Iowa Code sections.

Manufacturer P’s product is only sold for cosmetic purposes and is harmful to humans if consumed. Manufacturer P cannot claim exemption under Iowa Code section 423.3(49) for any carbon dioxide in

a liquid, solid, or gaseous form, electricity, steam, and taxable services used to produce its perfume. Manufacturer P may qualify for exemptions provided under other Iowa Code sections.

a. Certain entities eligible. An entity that processes a product owned by another entity is eligible for this exemption, subject to satisfying the other requirements to properly claim the exemption.

EXAMPLE: Company A owns and operates a processing facility. Company B owns corn and contracts with Company A to process the corn. Company B maintains ownership of the corn the entire time it is processed and in possession of Company A. Company B sells the processed corn to Company C, who will make retail sales of the processed corn. Company A is eligible to claim this exemption for any carbon dioxide in liquid, solid, or gaseous form, electricity, steam, or other taxable service used to process the corn.

b. Determination. The burden is on the taxpayer seeking to claim this exemption to establish that a product is a food or food ingredient for purposes of this exemption. The department's determination is a fact-based determination based on the information provided by a manufacturer and the individual circumstances at issue.

EXAMPLE: A manufacturer produces products, such as glucosamine, that are used as ingredients in orange juice, which is produced by a different entity. The glucosamine and the orange juice are both food or food ingredients for purposes of this exemption.

215.2(2) The following activities constitute processing when performed by a manufacturer to create food or food ingredients. Any carbon dioxide in a liquid, solid, or gaseous form, electricity, steam, or other taxable services primarily used in the performance of these activities is exempt from tax.

a. Treatment of material that changes its form, context, or condition in order to produce the food or food ingredient. Washing, sorting, and grading of fruits or vegetables; washing, sorting, and grading of eggs; repairing or replacing defective or broken-down machinery and equipment; and the mixing or agitation of liquids are examples of activities that do not qualify as "processing."

b. Maintenance of the quality or integrity of the food or food ingredient and the maintenance or the changing of temperature levels necessary to avoid spoilage or to hold the food or food ingredient in marketable condition. Any carbon dioxide in liquid, solid, or gaseous form, electricity, steam, or other taxable service used in freezers, heaters, coolers, refrigerators, or evaporators used in cooling or heating that holds the food or food ingredient at a temperature necessary to maintain quality or integrity or to avoid spoilage of the food or food ingredient or to hold the food or food ingredient in marketable condition is exempt from tax. It is not necessary that the taxable service be used to raise or lower the temperature of the food or food ingredient. Also, processing of food or food ingredients does not cease when the food or food ingredient is in marketable form. Any carbon dioxide in liquid, solid, or gaseous form, electricity, steam, or taxable service used to maintain or to change a temperature necessary to keep the food or food ingredient marketable is exempt from tax.

c. Any carbon dioxide in liquid, solid, or gaseous form, electricity, steam, or other taxable service primarily used in the maintenance of environmental conditions necessary for the safe or efficient use of machinery or material used to produce the food or food ingredient is exempt from tax. For example, electricity used to air-condition a room in which meat is stored is exempt from tax if the purpose of the air conditioning is to maintain the meat in a condition in which it is easy to slice rather than for the comfort of the employees who work in the room.

d. Any carbon dioxide in liquid, solid, or gaseous form, electricity, steam, or taxable service primarily used in sanitation and quality control activities is exempt from tax. Nonexclusive examples exempt from tax include taxable services used in pH meters, microbiology counters and incubators used to test the purity or sanitary nature of the food or food ingredient. For example, electricity used in egg-candling lights would be exempt from tax. Also, electricity, steam, or any taxable service used to power equipment that cleans and sterilizes food production equipment would be exempt from tax. Electricity used to power refrigerators used to store food or food ingredient samples for testing would be exempt from tax. Finally, electricity used to power "bug lights" or other insect-killing equipment used in areas where food or food ingredients are manufactured or stored would be exempt from tax.

e. Any carbon dioxide in liquid, solid, or gaseous form, electricity, steam, or taxable service used in the formation of packaging for food or food ingredients is exempt from tax. For example, electricity

used in plastic bottle-forming machines by a food manufacturer is exempt from tax if the plastic bottles will be used to hold the food or food ingredient, such as milk. Any electricity, steam, or other taxable service used in the heating, compounding, liquefying and forming of plastic pellets into these plastic bottles is exempt.

f. Any carbon dioxide in liquid, solid, or gaseous form, electricity, steam, or taxable service used in placement of the food or food ingredient into shipping containers is exempt from tax. For example, electricity used by a food manufacturer to place food or food ingredients into packing cases, pallets, crates, shipping cases, or other similar receptacles is exempt.

g. Any carbon dioxide in liquid, solid, or gaseous form, electricity, steam, or taxable service used to move material that will become a food or food ingredient or used to move the food or food ingredient itself until shipment from the building of manufacture is exempt from tax. This includes, but is not limited to, taxable services used in pumps, conveyors, forklifts, and freight elevators moving the material or the food or food ingredient and taxable services used in door openers that open doors for forklifts or other devices moving the material or the food or food ingredient. Any loading dock that is attached to a building of manufacture is a part of that building. Any electricity, steam, or taxable service used to move any food or food ingredient to a loading dock is exempt from tax. If the food or food ingredient is carried outside its building of manufacture by any conveyor belt system, electricity used by any portion of the system located outside the building is taxable.

This rule is intended to implement Iowa Code section 423.3(49).

701—215.3(423) Services used in processing.

215.3(1) Electricity, steam, or any taxable service is used in processing only when used in any operation that subjects raw material to some special treatment that changes, by artificial or natural means, the form, context, or condition of the raw material and results in a change of the raw material into marketable tangible personal property intended to be sold ultimately at retail. The following are nonexclusive examples of what would and would not be considered electricity, steam, or taxable services used in processing:

a. The sales price from the sale of electricity or steam consumed as power or used in the actual processing of tangible personal property intended to be sold ultimately at retail would be exempt from tax. The sales price of electricity or steam consumed for the purpose of lighting, ventilating, or heating manufacturing plants; warehouses; or offices is subject to tax. Also subject to tax is the sales price of any taxable services used to repair or replace defective or broken-down machinery and equipment.

b. The sales price from electricity used in the freezing of tangible personal property, ultimately to be sold at retail, to make the property marketable would be exempt from sales tax.

c. Electricity used merely in the refrigeration or the holding of tangible personal property for the purpose of preventing spoilage or to preserve the property in its present state would not be “used in processing” and, therefore, its sales price would be subject to tax.

215.3(2) Measurement of taxable and nontaxable use of electricity and steam. The exemption provided in the case of electricity or steam applies only upon the sales price from the sale of electricity or steam when the energy is consumed as power or is used in the processing of food products or other tangible personal property intended to be sold ultimately at retail, as distinguished from electricity or steam that is consumed for taxable purposes. When practical, electricity or steam consumed as power or used in processing must be separately metered and separately billed by the supplier thereof to clearly distinguish energy so consumed from electricity or steam that is consumed for purposes or under conditions in which the exemption would not apply. If it is impractical to separately meter electricity or steam which is exempt from that electricity or steam upon which tax will apply, the purchaser must furnish an exemption certificate to the supplier with respect to what percentage of electricity or steam in the case of each purchaser is subject to the exemption. The exemption certificate must be supported by a study showing how the percentage was developed. When a certificate and study are accepted by the supplier as a basis for determining exemption, any changes in the processing method, changes in equipment, or alterations in plant size or capacity affecting the percentage of exemption will necessitate the filing of a new and revised statement by the purchaser. When the electric or steam energy is

separately metered, enabling the supplier to accurately apply the exemption in the case of processing energy, the purchaser need only file an exemption certificate since the supplier, under such conditions, will separately record and compute the consumption of energy which is exempt from tax apart from that energy which is subject to tax.

This rule is intended to implement Iowa Code section 423.3(50).

701—215.4(423) Chemicals, solvents, sorbents, or reagents used in processing.

215.4(1) Chemicals, solvents, sorbents, and reagents directly used and consumed, dissipated, or depleted in processing tangible personal property intended to be sold ultimately at retail are exempt from sales and use tax. For the purpose of this processing exemption rule, free newspapers and shoppers' guides are considered to be retail sales. The terms "chemical," "solvent," "sorbent," and "reagent" are defined in rule 701—200.1(423).

215.4(2) For the purpose of this rule, a catalyst is considered to be a chemical, solvent, sorbent, or reagent. A catalyst is a substance which promotes or initiates a chemical reaction and, as such, is exempt from tax if consumed, dissipated, or depleted during processing of tangible personal property intended to be ultimately sold at retail.

215.4(3) To qualify for this exemption, all of the following conditions must be met:

- a. The item must be a chemical, solvent, sorbent, or reagent.
- b. The chemical, solvent, sorbent, or reagent must be directly used and consumed, dissipated, or depleted during processing.
- c. The processing must be performed on tangible personal property intended to be sold ultimately at retail.
- d. The chemical, solvent, sorbent, or reagent need not become an integral or component part of the processed tangible personal property.

This rule is intended to implement Iowa Code section 423.3(51).

701—215.5(423) Exempt sales of gases used in the manufacturing process. Sales of argon and other similar gases to be used in the manufacturing process are exempt from tax. For the purposes of this rule, only inert gases are gases that are similar to argon. An "inert gas" is any gas that is normally chemically inactive. It will not support combustion and cannot be used as either a fuel or as an oxidizer. Argon, helium, neon, krypton, radon, and xenon are inert gases. Oxygen, hydrogen, and methane are nonexclusive examples of gases that are not inert. These sales are exempt only if the gas is purchased by a "manufacturer," for use in "processing," as those terms are defined in Iowa Code section 423.3(47) "d."

This rule is intended to implement Iowa Code section 423.3(52).

701—215.6(423) Sale of electricity to water companies. The sales price from the sale of electricity to water companies assessed for property tax pursuant to Iowa Code sections 428.24, 428.26, and 428.28, that is used solely for the purpose of pumping water from a river or well is exempt from sales tax. For the purposes of this rule, "river" means a natural body of water or waterway that is commonly known as a river. "Well," for the purposes of this rule, means an issue of water from the earth; a mineral spring; a pit or hole sunk into the earth to reach a water supply; a shaft or hole sunk to obtain water.

This rule is intended to implement Iowa Code section 423.3(53).

701—215.7 Reserved.

701—215.8(423) Exempt sales or rentals of core-making and mold-making equipment, and sand-handling equipment.

215.8(1) *Exempt sales and rentals of machinery and equipment.* The sales price from sales or rentals of core-making, mold-making, and sand-handling machinery and equipment, including replacement parts, directly and primarily used by a foundry in the mold-making process is exempt from tax. For the purposes of this rule, a "foundry" is an establishment where metal, but not plastic, is melted and poured into molds. A nonexclusive list of equipment that may be exempt includes sand storage tanks, conveyors, patterns, mallor controllers, and sand mixers. A nonexclusive list of items that would not be

exempt includes sand and other materials (as opposed to equipment) used to build molds or cores, and supplies. Services used in the mold-making process are not exempted from tax by this rule. Subrule 215.14(2) provides definitions of “directly used,” “equipment,” and “machinery.” Iowa Code section 423.3(47) “d” provides definitions of “replacement part” and “supplies.”

215.8(2) *Exempt sales of fuel and electricity.* The sales price from sales of fuel used in creating heat, power, or steam for, or used for generating electric current for, or electric current sold for use in machinery or equipment the sale or rental of which is exempt under subrule 215.8(1) is exempt from tax.

215.8(3) *Exempt design and installation services.* The sales price from furnishing design and installation services, including electrical and electronic installation, of machinery and equipment the sale or rental of which is exempt under subrule 215.8(1) is exempt from tax.

This rule is intended to implement Iowa Code section 423.3(82).

701—215.9(423) Chemical compounds used to treat water. Chemical compounds placed in water that is ultimately sold at retail should be purchased exempt from the tax. The chemical compounds become an integral part of property sold at retail. Chemical compounds placed in water that is directly used in processing are exempt from the tax, even if the water is consumed by the processor and not sold at retail.

Chemical compounds that are used to treat water that is not sold at retail or that are not used directly in processing are subject to tax. An example would be chlorine or other chemicals used to treat water for a swimming pool.

Special boiler compounds used by processors when live steam is injected into the mash or substance, whereby the steam liquefies and becomes an integral part of the product intended to be sold at retail and also becomes a part of the finished product, is exempt from tax.

This rule is intended to implement Iowa Code section 423.3(51).

701—215.10(423) Exclusive web search portal business and its exemption. A business that qualifies as a web search portal business that has a physical location in Iowa and that meets specific criteria may obtain an exemption from sales and use tax on specific purchases that are used in the operation and maintenance of the web search portal business. This exemption from sales and use tax also applies to the affiliates of a qualifying web search portal business.

215.10(1) *Definitions.* For the purpose of this exemption, “affiliate,” “control,” and “web search portal business” mean the same as defined in Iowa Code section 423.3(92) “e.”

215.10(2) *Claiming the exemption.* Iowa Code section 423.3(92) “b” provides the criteria to claim this exemption. If a business fails to meet the investment qualification found in Iowa Code section 423.3(92) “d,” the web search portal business loses the right to claim the exemption and the business is required to pay all sales or use taxes that would have been due on the purchase or rental of all purchases previously claimed exempt from sales and use tax, plus any and all applicable statutory penalty and interest due on the tax.

215.10(3) *Exempt purchases.* Sales and leases of the following are exempt from sales and use tax when sold or leased to a qualifying web search portal business:

- a. Computers and equipment that are necessary for the maintenance and operation of the web search portal business;
- b. All equipment used for the operation and maintenance of the cooling system for the computers and equipment used in the operation of the web search portal;
- c. All equipment used for the operation and maintenance of the cooling towers for the cooling system referenced in paragraph 215.10(3) “b”;
- d. All equipment used for the operation and maintenance of the temperature control infrastructure for the computers and equipment used in the operation of the web search portal;
- e. All equipment used for the operation and maintenance of the power infrastructure that is used for the transformation, distribution, or management of electricity used for the operation and maintenance of the web search portal. This equipment includes, but is not limited to, exterior dedicated business-owned power substations, backup power generation systems, battery systems, and related infrastructure;
- f. All equipment used in the racking system, including cabling and trays;

g. Fuel purchased by the web search portal business that is used in the backup power generation system and in all items listed in paragraphs 215.10(3) “a” through “f.” This provision includes the fuel used in backup generators that may be located outside of the building that are used if power is interrupted to ensure the web search portal continues operation; and

h. Electricity purchased for use in operating the web search portal.

215.10(4) *Limitation of exemption.* The purchases or leases of the items listed in subrule 215.10(3) are only exempt if the items being purchased or leased are being used in the operation or maintenance of the web search portal business. Such purchases or leases will not be exempt from sales or use tax if the item is to be used in the business for another purpose not related to operations or maintenance. Examples of items included in this limitation include but are not limited to:

a. Electricity not used for operation or maintenance, such as in the office or employee break room;

b. Tangible personal property used in areas of the web search portal facility that is not used for operation or maintenance, such as cleaning equipment and supplies;

c. Building materials that become part of real property, such as concrete, steel or roofing; and

d. Tangible personal property that becomes part of real property, such as a dishwasher.

215.10(5) *Initial date of exemption.* The exemption from sales and use tax begins on and after the date of the initial investment in or the initiation of site preparation activities for the facility that will contain the qualifying web search portal business.

This rule is intended to implement Iowa Code section 423.3(92).

701—215.11(423) Web search portal business and its exemption. A business that qualifies as a web search portal business that has a physical location in Iowa and that meets specific criteria may obtain an exemption from sales and use tax on specific purchases that are used in the operation and maintenance of the web search portal business. This exemption from sales and use tax also applies to the affiliates of a qualifying web search portal business.

215.11(1) *Definitions.* For the purpose of this exemption, “affiliate,” “control,” and “web search portal business” mean the same as defined in Iowa Code section 423.3(93) “e.”

215.11(2) *Claiming the exemption.* Iowa Code section 423.3(93) “b” provides the criteria to claim this exemption. If a business fails to meet the investment qualification found in Iowa Code section 423.3(93) “d,” the web search portal business loses the right to claim the exemption and the business is required to pay all sales or use taxes that would have been due on the purchase or rental of all purchases previously claimed exempt from sales and use tax, plus any and all applicable statutory penalty and interest due on the tax.

215.11(3) *Exempt purchases.* Sales and leases of the following are exempt from sales and use tax when sold or leased to a qualifying web search portal business:

a. Computers and equipment that are necessary for the maintenance and operation of the web search portal business;

b. All equipment used for the operation and maintenance of the cooling system for the computers and equipment used in the operation of the web search portal business;

c. All equipment used for the operation and maintenance of the cooling towers for the cooling system referenced in paragraph 215.11(3) “b”;

d. All equipment used for the operation and maintenance of the temperature control infrastructure for the computers and equipment used in the operation of the web search portal business;

e. All equipment used for the operation and maintenance of the power infrastructure that is used for the transformation, distribution, or management of electricity used for the operation and maintenance of the web search portal business. This equipment includes, but is not limited to, exterior dedicated business-owned power substations and backup power generation systems, battery systems, and related infrastructure;

f. All equipment used in the racking system, including cabling and trays;

g. Fuel purchased by the web search portal business that is used in the back-up power generation system and in all items listed in paragraphs 215.11(3) “a” through “f.” This includes the fuel used in the

backup generators that may be located outside the building and that are used if power is interrupted to ensure the web search portal business continues operation; and

h. Electricity purchased for use in operating the web search portal business.

215.11(4) *Limitation of exemption.* The purchase or lease of the items listed in subrule 215.11(3) is only exempt if the items being purchased or leased are being used in the operation or maintenance of the web search portal business. Such purchases or leases will not be exempt from sales or use tax if the item is to be used in the business for another purpose. For example, the purchase of electricity for use in the office portion of the web search portal facility would not be exempt. The purchase of building materials that become real property would not be exempt. For example, the purchase of a dishwasher that will be built into a kitchen area in the break room for employees would not be exempt from tax. The purchase of a dishwasher is the purchase of tangible personal property. However, upon installation, the dishwasher becomes part of the building and realty and is not exempt from Iowa sales or use tax.

This rule is intended to implement Iowa Code section 423.3(93)

701—215.12(423) Large data center business exemption. A data center business that has a physical location in Iowa and that meets specific criteria may obtain an exemption from sales and use tax on specific purchases that are used in the operation and maintenance of the data center business.

215.12(1) *Definitions.* For the purpose of this rule, “data center” and “data center business” mean the same as defined in Iowa Code section 423.3(95) “e.”

215.12(2) *Claiming the exemption.* Iowa Code section 423.3(95) “b” provides the criteria to claim this exemption. If a business fails to meet the investment qualification found in Iowa Code section 423.3(95) “d,” the data center business loses the right to claim the exemption and the business is required to pay all sales or use taxes that would have been due on the purchase or rental of all purchases previously claimed exempt from sales and use tax, plus any and all applicable statutory penalty and interest due on the tax.

215.12(3) *Exempt purchases.* Paragraphs 215.11(3) “a” through “h” are incorporated in full by this reference.

215.12(4) *Limitation of exemption.* The purchase or lease of the items listed in subrule 215.12(3) is only exempt if the items being purchased or leased are being used in the operation or maintenance of the data center business. Such purchases or leases will not be exempt from sales or use tax if the item is to be used in the business for another purpose. For example:

a. The purchase of electricity for use in the office portion of the data center business facility would not be exempt.

b. The purchase of building materials that become real property would not be exempt. For example, the purchase of a dishwasher that will be built into a kitchen area in the break room for employees would not be exempt from tax. Although the purchase of a dishwasher is the purchase of tangible personal property, upon installation, the dishwasher becomes part of the building and realty and, therefore, is not exempt from Iowa sales and use tax.

This rule is intended to implement Iowa Code section 423.3(95).

701—215.13(423) Data center business sales and use tax refunds. Data center businesses in Iowa meeting certain criteria may make an annual application to the department for a refund of 50 percent of the sales and use tax paid on the sales price of certain computers, equipment, fuel, and electricity used in the operation of the data center business.

215.13(1) *Definitions.* For the purpose of this rule, “data center” and “data center business” mean the same as defined in Iowa Code section 423.3(95) “e.”

“*Refund year*” means the year beginning with the date of initial site preparation of the data center facility.

“*Rehabilitation*” means a process of substantial repair, remodeling, or alteration, which may include but is not limited to upgrading mechanical systems, plumbing, roofing, wiring, windows, and heating and cooling systems, and performing significant interior or exterior structural modification. Although they may be included as part of an overall rehabilitation project, singular actions such as the installation

of a new information system or cosmetic changes to the interior or exterior appearance of a building do not, in and of themselves, constitute a rehabilitated building.

215.13(2) Basis and criteria for refunds. The amount, type, and length of refunds available to data center businesses depend upon the dollar amount of investment made, the type of construction undertaken, and the size in square feet of the facility.

a. Investment of \$136 million to \$200 million. Data center businesses which make investments in an Iowa facility of \$136 million to \$200 million in the first six years of operations and which facility contains at least 5,000 square feet are eligible for a refund of 50 percent of the sales and use tax paid on qualifying computers and equipment, backup fuel, and electricity for the first seven years of operation.

b. Investment of \$10 million to \$136 million—new construction. Data center businesses which make investments of \$10 million to \$136 million in the first six years of operations in the new construction of an Iowa facility that is at least 5,000 square feet are eligible for a refund of 50 percent of the sales and use tax paid on qualifying computers and equipment, backup fuel, and electricity for the first ten years of operation.

c. Investment of \$5 million to \$136 million—rehabilitation. Data center businesses which make investments of \$5 million to \$136 million in the first six years of operations in the rehabilitation of an Iowa facility that is at least 5,000 square feet are eligible for a refund of 50 percent of the sales and use tax paid on qualifying computers and equipment, backup fuel, and electricity for the first ten years of operation.

d. Investment of \$1 million to \$10 million—new construction. Data center businesses which make investments of \$1 million to \$10 million in the first three years of operations in the new construction of an Iowa facility of any size are eligible for a refund of 50 percent of the sales and use tax paid on fuel and electricity for the first five years of operation.

e. Investment of \$1 million to \$5 million—rehabilitation. Data center businesses which make investments of \$1 million to \$5 million in the first three years of operations in the rehabilitation of an Iowa facility of any size are eligible for a refund of 50 percent of the sales and use tax paid on fuel and electricity for the first five years of operation.

215.13(3) Purchases eligible for refunds. Paragraphs 215.11(3)“a” through “h” are incorporated in full by this reference.

215.13(4) Sustainable design standards. In order to claim the refunds detailed in paragraphs 215.13(3)“a” through “h,” data center businesses must comply with the sustainable design and construction standards as required by 661—Chapter 310 as established by the state building code commissioner pursuant to Iowa Code section 103A.8B.

215.13(5) Failure to meet investment qualifications. If a business fails to meet the investment qualification found in Iowa Code section 423.3(95)“d,” the data center business loses the right to claim the refund and the business is required to return the refund of sales and use tax paid on qualifying computers, equipment, fuel, and electricity, plus any and all applicable statutory penalty and interest due on the tax.

215.13(6) Limitation of refunds.

a. Use in operation or maintenance. The purchase or lease of the items listed in subrule 215.13(3) is only eligible for a refund of sales and use tax if the items being purchased or leased are being used in the operation or maintenance of the data center business. Such purchases or leases will not be eligible for a refund of sales and use tax if the item is to be used in the business for another purpose. For example:

(1) The purchase of electricity for use in the office portion of the data center business facility would not be eligible for a refund.

(2) The purchase of building materials that become real property would not be eligible for a refund. For example, the purchase of a dishwasher that will be built into a kitchen area in the break room for employees would not be eligible for a refund of tax. Although the purchase of a dishwasher is the purchase of tangible personal property, upon installation, the dishwasher becomes part of the building and realty and, therefore, is not eligible for a refund of Iowa sales and use tax.

b. State sales tax only. Refunds issued under this rule may not exceed 6 percent of the sales price of computers and equipment listed in subrule 215.13(3) and the fuel used to create heat, power and

steam for processing or generating electrical current or from the sales price of electricity consumed by computers, machinery, or other equipment for operation of the data center business facility. The refund will not include any local option sales and services taxes.

c. Qualifying dates for fuel and electricity refund. To qualify for the 50 percent refund, the following must be on or after the first day of the first month through the last day of the last month of the refund year:

- (1) The dates of the utility billing or meter reading cycle for the sale or furnishing of metered gas and electricity;
- (2) The dates of the sale or furnishing of fuel for purposes of commercial energy; and
- (3) The delivery of the fuel used for purposes of commercial energy.

215.13(7) Form and filing requirements.

a. Form. The owner of a data center business seeking a refund of sales and use tax imposed upon the sale or lease of any qualifying computers, equipment, fuel, and electricity must complete and file with the department Form IA 843, Claim for Refund. All of the information on the Claim for Refund must be completed.

b. Due date. The refund request form must be filed with the department no later than one year after the purchase of the qualifying computers, equipment, fuel, or electricity and within three months after the end of the refund year. The refund for sales and use tax begins with purchases made on and after July 1, 2009, or on and after the date of the initial investment in or the initiation of site preparation activities for the facility that will contain the qualifying data center business.

c. Date required. The refund request must include detailed schedules of the items being claimed including dates of purchase of tangible personal property, amount of purchase, and tax paid. The purchase of fuel and electricity must be computed and documented separately from other purchases.

d. Affidavit. In addition to completing and filing Form IA 843, Claim for Refund, the owner of a data center business seeking a refund as specified in this rule must also complete and file with the department an affidavit certifying that qualifications for the refund have been met. The affidavit must be approved by the department before a refund claim can be reviewed. The following format must be used for the affidavit:

Iowa Department of Revenue
Sales Tax Refund Affidavit

NAME OF AFFIANT

ADDRESS OF AFFIANT



AFFIDAVIT FOR
DATA CENTER BUSINESS

The undersigned duly swears that the named data center business complies with criteria to be entitled to refund of sales tax as required in Iowa Code section 423.4 as follows:

1. The facility is a data center business as defined by Iowa Code section 423.4(7) or 423.4(8);
2. The data center business facility will be a minimum of 5,000 square feet, as applicable, located upon Iowa land; and located at _____; with total square footage of _____;
3. The data center business will make an investment of (check only one):
 - ☐ \$136 million to \$200 million within the first six years of operation (refund available for first seven years).
 - ☐ \$10 million to \$136 million for new construction within the first six years of operation (refund available for first ten years).
 - ☐ \$5 million to \$136 million for rehabilitation of an existing facility within the first six years of operation (refund available for first ten years).
 - ☐ \$1 million to \$10 million for new construction within the first three years of operation (refund of tax paid on fuel and electricity only; refund available for first five years).
 - ☐ \$1 million to \$5 million for rehabilitation of an existing facility within the first three years of operation (refund of tax paid on fuel and electricity only; refund available for first five years).

4. The data center business facility will be constructed in accordance with the sustainable design and construction standards as required by Iowa Administrative Code 661—Chapter 310 and established by the building code commissioner pursuant to Iowa Code section 103A.8B;

5. Construction of the data center business facility was commenced on or after July 1, 2009; and the date of the initial site preparation or building rehabilitation was _____; and

6. Purchases of qualifying computers, equipment, fuel or electricity were made on or after July 1, 2009.

The undersigned duly swears that he or she is the owner of the qualifying data center business or that the undersigned is the authorized representative of the qualifying data center business and has the authority to sign this document. The undersigned swears that he or she has personal knowledge regarding the facts contained in this affidavit and that the statements set forth in this affidavit are true and accurate and that the qualifying data center business has met all of the requirements as contained herein.

Name of Affiant

Date

Position of Affiant

This rule is intended to implement Iowa Code section 423.4(7) and 423.4(8).

701—215.14(423) Exemption for the sale of computers, computer peripherals, machinery, equipment, replacement parts, supplies, and materials used to construct or self-construct computers, computer peripherals, machinery, equipment, replacement parts, and supplies used for certain manufacturing purposes. The sales price of computers, computer peripherals, machinery, equipment, replacement parts, supplies, and materials used to construct or self-construct computers, computer peripherals, machinery, equipment, replacement parts, and supplies is exempt when used for an exempt manufacturing purpose. Rule 701—215.21(423) exempts the purchase of fuel used in such computers, computer peripherals, machinery, and equipment. Rule 701—215.22(423) exempts the service of designing or installing new industrial machinery and equipment.

215.14(1) Generally. The sales price of computers, computer peripherals, machinery, equipment, replacement parts, supplies, and materials used to construct or self-construct computers, computer peripherals, machinery, equipment, replacement parts, and supplies is exempt from sales and use tax if the property is any of the following:

a. Directly and primarily used in processing by a manufacturer (as described in rule 701—215.15(423)).

b. Directly and primarily used to maintain the integrity of the product or to maintain unique environmental conditions required for either the product or the computers, computer peripherals, machinery, and equipment used in processing by a manufacturer, including test equipment used to control quality and specifications of the product (as described in rule 701—215.16(423)).

c. Directly and primarily used in research and development of new products or processes of processing (as described in rule 701—215.17(423)).

d. Directly and primarily used in recycling or reprocessing of waste products (as described in rule 701—215.19(423)).

e. Pollution-control equipment used by a manufacturer, including but not limited to that required or certified by an agency of this state or of the United States government (as described in rule 701—215.20(423)).

f. Fuel used in creating heat, power, steam, or for generating electrical current, or from the sale of electricity, consumed by computers, computer peripherals, machinery, or equipment used in an exempt manner described in paragraph 215.14(1)“*a*,” through “*e*,” (as described in rule 701—215.21(423)).

215.14(2) Computers, computer peripherals, machinery, equipment, replacement parts, supplies, and materials used to construct or self-construct computers, computer peripherals, machinery, equipment, replacement parts, and supplies.

a. *Computers and computer peripherals.* “Computer” and “computer peripheral” mean the same as defined in Iowa Code section 423.1.

b. *Machinery.* “Machinery” is any mechanical, electrical, or electronic device designed and used to perform some function and to produce a certain effect or result. The term includes not only the basic unit of the machinery but also any adjunct or attachment necessary for the basic unit to accomplish its intended function. “Machinery” also includes all devices used or required to control, regulate, or operate a piece of machinery, provided such devices are directly connected with or are an integral part of the machinery and are used primarily for control, regulation, or operation of machinery. Other devices necessary to the operation of or used in conjunction with the operation of what would be ordinarily thought of as machinery are also considered to be machinery. “Machinery” does not include tangible personal property that becomes a structure or a part of real property after installation.

c. *Equipment.* In general usage, “equipment” refers to devices or tools used to produce a final product or achieve a given result. Exempt “equipment” under these rules includes tables on which property is assembled on an assembly line, if those tables are directly and primarily used in processing by a manufacturer. “Equipment” does not include tangible personal property that becomes a structure or a part of real property after installation.

d. *Replacement parts.* “Replacement part” means the same as defined in Iowa Code section 423.3(47) “d.”

e. *Supplies.* “Supplies” means the same as defined in Iowa Code section 423.3(47) “d.”

f. *Materials used to construct or self-construct computers, computer peripherals, machinery, equipment, replacement parts, and supplies.* “Materials used to construct or self-construct computers, computer peripherals, machinery, equipment, replacement parts, and supplies” means tangible personal property that is incorporated into a computer, computer peripheral, machinery, equipment, replacement part, or supply when the computer, computer peripheral, machinery, equipment, replacement part, or supply is constructed or assembled.

g. *Exclusions.* Sales of the following property, or materials used to construct or self-construct the following property, are not exempt under rules 701—215.14(423) through 701—215.20(423), regardless of how the property is used.

(1) Land.

(2) Intangible property.

(3) Hand tools. “Hand tool” means a tool that can be held in the hand or hands and is powered by human effort.

(4) Point-of-sale equipment, computers, and computer peripherals. “Point-of-sale equipment, computers, and computer peripherals” means input, output, and processing equipment, computers, and computer peripherals used to consummate a sale and to record or process information pertaining to a sale transaction at the time the sale takes place and is located at the counter, desk, or other specific point where the transaction occurs. Point-of-sale equipment, computers, and computer peripherals do not include equipment, computers, and computer peripherals used primarily for depositing or withdrawing funds from financial institution accounts.

(5) Certain centrally assessed industrial machinery, equipment, computers, and computer peripherals. Property that is centrally assessed by the department of revenue under Iowa Code sections 428.24 to 428.29 or chapters 433, 434, 437, 437A, 437B, and 438 does not qualify for exemption under rules 701—215.14(423) through 701—215.20(423). Property used but not owned by persons whose property is defined by such provisions of the Iowa Code, which would be assessed by the department of revenue if the persons owned the property, also does not qualify for exemption under rules 701—215.14(423) through 701—215.20(423).

(6) Vehicles subject to registration. The general sales and use tax does not apply to vehicles subject to registration under Iowa Code chapter 321. Instead, such vehicles are subject to the fee for new registration under Iowa Code section 321.105A. Vehicles subject to registration are not exempt from the fee for new registration under rules 701—215.14(423) through 701—215.20(423), unless the vehicle is directly and primarily used in recycling or reprocessing of waste products (as described in rule 701—215.19(423)).

h. Examples. When used for an exempt purpose under rules 701—215.14(423) through 701—215.20(423), the following items may be exempt computers, computer peripherals, machinery, equipment, replacement parts, or supplies. This list is not all-inclusive.

- (1) Coolers, including coolers that do not change the nature of materials stored in them.
- (2) Equipment that eliminates bacteria.
- (3) Palletizers.
- (4) Storage bins.
- (5) Property used to transport raw, semifinished, or finished goods.
- (6) Vehicle-mounted cement mixers.
- (7) Self-constructed machinery and equipment.
- (8) Packaging and bagging equipment, including conveyor systems.
- (9) Equipment that maintains an environment necessary to preserve a product's integrity.
- (10) Equipment that maintains a product's integrity directly.
- (11) Quality control equipment.
- (12) Water used for cooling.

215.14(3) *Leased and rented property.* The exemptions under rules 701—215.14(423) through 701—215.22(423) apply to property regardless of how it is sold, including leased or rented property. The lease of computers, computer peripherals, machinery, equipment, replacement parts, or supplies may be exempt from sales and use tax if the lessee uses the property in an exempt manner under rules 701—215.14(423) through 701—215.20(423). Additionally, a lessor's purchase of computers, computer peripherals, machinery, equipment, replacement parts, or supplies for lease or resale may be an exempt sale for resale under Iowa Code section 423.3(2).

215.14(4) *Recordkeeping.* Individuals claiming an exemption must always be able to prove they qualify for the exemption. To claim the exemptions described in this rule, purchasers must be able to prove that computers, computer peripherals, machinery, equipment, replacement parts, supplies, and materials used to construct or self-construct the same are used for an exempt purpose under rules 701—215.14(423) through 701—215.20(423). When both exempt and nonexempt machinery and equipment are used in the same facility, replacement parts and supplies used in the machinery and equipment are exempt under these rules only to the extent the purchaser can prove which replacement parts and supplies were used in the exempt machinery and equipment. Detailed, contemporaneous records should be maintained to verify that qualifying property is used for an exempt purpose. The precise records required may vary from purchaser to purchaser. Computers, computer peripherals, machinery, equipment, replacement parts, supplies, and materials used to construct or self-construct the same are not exempt under rules 701—215.14(423) through 701—215.20(423) if the property is not used for an exempt purpose.

This rule is intended to implement Iowa Code section 423.3(47).

701—215.15(423) Exemption for the sale of property directly and primarily used in processing by a manufacturer. The sales price of computers, computer peripherals, machinery, equipment, replacement parts, supplies, and materials used to construct or self-construct computers, computer peripherals, machinery, equipment, replacement parts, and supplies is exempt from sales and use tax when the property is directly and primarily used in processing by a manufacturer.

215.15(1) *Required elements.* To qualify for exemption under this rule, the purchaser must prove the property is:

- a.* Computers, computer peripherals, machinery, equipment, replacement parts, supplies, or materials used to construct or self-construct computers, computer peripherals, machinery, equipment, replacement parts, or supplies as described in subrule 215.14(2);
- b.* Directly used as described in subrule 215.15(2);
- c.* Primarily used as described in subrule 215.15(2);
- d.* Used in processing as described in subrule 215.15(3); and
- e.* Used by a manufacturer as described in subrule 215.15(4).

215.15(2) *Directly and primarily used.*

a. Directly used.

(1) Generally. Property is “directly used” only if it is used to initiate, sustain, or terminate an exempt activity. In determining whether any property is “directly used,” consideration should be given to the following factors:

1. The physical proximity of the property to the exempt activity;
2. The temporal proximity of the use of the property to the use of other property that is directly used in the exempt activity; and
3. The active causal relationship between the use of the property and the exempt activity. The fact that a particular piece of property may be essential to the conduct of the activity because its use is required either by law or practical necessity does not, of itself, mean that the property is directly used.

(2) Examples. The following property typically is not directly used in an exempt manner:

1. Property used exclusively for the comfort of workers, such as air cooling, air conditioning, or ventilation systems.
2. Property used in support operations, such as a machine shop, where production machinery is assembled, maintained, or repaired.
3. Property used by administrative, accounting, or personnel departments.
4. Property used by security, fire prevention, first aid, or hospital stations.
5. Property used in communications or safety.

b. Primarily used. The primary use of property is the activity or activities for which the property is used more than half of the time.

215.15(3) Processing.

a. Generally. “Processing” and “receipt or producing of raw materials” mean the same as defined in Iowa Code section 423.3(47) “d.” With respect to raw materials produced from or upon real estate, “production of raw materials” is deemed to occur immediately following the severance of the raw materials from the real estate.

b. The beginning of processing. Processing begins with a processor’s receipt or production of raw material. Thus, when a processor produces its own raw material, it is engaged in processing. Processing also begins when a supplier transfers possession of raw materials to a processor.

c. The completion of processing. Processing ends when the finished product is transferred from the processor or delivered for shipment by the processor. Therefore, a processor’s packaging, storage, and transport of a finished product after the product is in the form in which it will be sold at retail are part of the processing of the product.

d. Examples of the beginning, intervening steps, and the ending of processing. Of the following, Examples A and B illustrate when processing begins under various circumstances, Example C demonstrates the middle stages of processing, and Example D demonstrates when the end of processing takes place.

EXAMPLE A: Company A manufactures fine furniture. Company A owns a grove of walnut trees that it uses as raw material. Company A’s employees cut the trees, transport the logs to Company A’s facility, store the logs in a warehouse to begin the curing process, and eventually take the logs to Company A’s sawmill. The walnut trees are real property while they are growing. Thus, no “production of raw materials” has occurred with regard to the trees until they have been severed from the soil and transformed into logs. Processing of the logs begins when they are placed on vehicles for transport to Company A’s factory. However, if the transport vehicles are “vehicles subject to registration,” the vehicles are not exempt from the fee for new registration under this rule (as described in subparagraph 215.14(2) “g”(6)).

EXAMPLE B: Company A from the previous example also buys mahogany logs from a supplier in Honduras. Company A uses its equipment to offload the logs from railroad cars at its facility. Company A then stores and saws the logs as previously described in Example A. Processing begins when Company A offloads the logs from the railroad cars.

EXAMPLE C: Company C is a microbrewery. It uses a variety of kettles, vats, tanks, tubs, and other containers to mix, cook, ferment, settle, age, and store the beer it brews. Company C also uses a variety of pipes and pumps to move the beer among the various containers involved in the activity of brewing.

All stages of this brewing are part of processing, including fermentation or aging (the transformation of the raw materials from one state to another) as well as the storage of hops in a bin and the storage of beer prior to bottling (the holding of materials in an existing state). Any movement of the product between containers is also a part of processing.

EXAMPLE D: After the brewing process is complete, Company C places its beer in various containers, stores the beer, and moves the beer to Company C's customers by a common carrier that picks up the beer at Company C's facility. Company C's activities of placing the beer into bottles, cans, and kegs, storing the beer after packaging, and moving the beer by use of a forklift to the common carrier's pickup site are part of processing.

215.15(4) Manufacturer.

a. *Generally.* Iowa Code section 423.3(47) "d"(4) abrogates *The Sherwin-Williams Company v. Iowa Department of Revenue*, 789 N.W.2d 417 (Iowa 2010).

b. *Definitions.*

"Construction contracting" means engaging in or performing a construction contract as described in rule 701—219.8(423).

"Manufacturer" means the same as defined in Iowa Code section 423.3(47).

"Transporting for hire" means the service of moving persons or property for consideration, including but not limited to the use of a "personal transportation service" as that term is described in Iowa Code section 423.2(6) and rule 701—211.51(423).

c. *Primarily engaged in an excluded activity.* A person is not considered a manufacturer if the person is "primarily engaged" in any of the activities listed in Iowa Code section 423.3(47) "d"(4)(c). A person is "primarily engaged" in an activity if the person generates more than 50 percent of the person's gross revenue from its operating business from, or spends more than 50 percent of the person's time engaging in, any combination of those activities during the 12-month period after the date the person engages in one of the listed activities.

EXAMPLE 1: Company A makes widgets and repairs widgets damaged during use by its customers. Company A generates 70 percent of its revenue making widgets, and its employees spend 80 percent of their time making widgets. The remainder of its revenue and time are attributed to widget repair. Company A is not primarily engaged in "repairing tangible personal property or real property" (Iowa Code section 423.3(47) "d"(4)(c)(ii)) or any of the other enumerated activities from Iowa Code section 423.3(47) "d"(4)(c) because only 30 percent of its revenue and 20 percent of employee time are attributed to widget repair.

EXAMPLE 2A: Company B makes concrete and sells it for resale or directly to individual consumers without entering into a construction contract. Company B generates 100 percent of its revenue from such sales of concrete, and its employees spend 95 percent of their time making concrete during the 12-month period after it claims to be a manufacturer. Company B is not excluded from being considered a manufacturer because Company B's production and sale of concrete are not part of construction contracting (Iowa Code section 423.3(47) "d"(4)(c)(i)).

EXAMPLE 2B: Company B begins construction contracting to sell its concrete. After 12 months of construction contracting (Iowa Code section 423.3(47) "d"(4)(c)(i)), Company B generates 55 percent of its revenue from construction contracting and 45 percent from resale sales or sales directly to consumers and spends 40 percent of its time performing construction contracts. Company B is no longer considered a manufacturer starting 12 months from the date it began construction contracting because it generates more than 50 percent of its gross revenue from construction contracting.

215.15(5) Manufacturing.

a. *Activities commonly understood to be manufacturing.* "Manufacturing" means the same as defined in Iowa Code section 423.3(47).

b. *Premises primarily used to make retail sales.*

(1) A person engaged in activities on a premises primarily used to make retail sales is not engaged in manufacturing at that premises and cannot claim this exemption for items used at that premises.

(2) The following are "premises primarily used to make retail sales":

1. Restaurants.

2. Mobile food vendors, vehicles, trailers, and other facilities used for retail sales.
3. Retail bakeries.
4. Prepared food retailers establishments.
5. Bars and taverns.
6. Racing and gaming establishments.
7. Racetracks.
8. Casinos.
9. Gas stations.
10. Convenience stores.
11. Hardware and home improvement stores.
12. Grocery stores.
13. Paint or paint supply stores.
14. Floral shops.
15. Other retail stores.

c. Rebuttable presumption. In addition to the premises listed in paragraph 215.15(5)“b,” a premises shall be presumed to be “primarily used to make retail sales” when more than 50 percent of the gross sales of a business and its affiliates attributable to the premises are retail sales sourced to the premises under Iowa Code section 423.15(1)“a.”

- (1) For purposes of paragraph 215.15(5)“c”:

“*Attributable to the premises*” means sales of tangible personal property at the premises or shipped from the premises to another location for sale or eventual sale.

“*Premises*” means any contiguous parcels, as defined in Iowa Code section 426C.1, which are owned, leased, rented, or occupied by a business or its affiliates and are operated by that business or its affiliates for a common business purpose. A “common business purpose” means the participation in any stage of manufacturing, production, or sale of a product. Whether a business is operating for a common business purpose is a fact-based determination that will depend on the individual circumstances at issue.

(2) Calculation. If a business seeking to claim this exemption makes retail sales sourced to a premises under Iowa Code section 423.15(1)“a” and the location is not one of those listed in paragraph 215.15(5)“b,” the business shall determine whether a specific premises are primarily used to make retail sales by determining the amount of retail sales sourced to the premises under Iowa Code section 423.15(1)“a” during the 12-month period after the date the tangible personal property claimed to be exempt is used at the premises. The calculation should be done as follows:

Retail sales sourced to the premises

Gross sales attributable to the premises

If the result is less than or equal to 0.5 (or 50 percent), the premises is not primarily used to make retail sales. If the result is greater than 0.5, the premises is presumed to be primarily used to make retail sales.

(3) Rebutting the presumption. If a premises is presumed to be primarily used to make retail sales under subparagraph 215.15(5)“c”(2), a manufacturer may prove to the department the premises is not primarily used to make retail sales by providing information regarding the following nonexclusive list of factors to support its assertion:

1. The square footage of the premises allocated to the manufacturing process.
2. The number of employees or employee work hours allocated to the manufacturing process.
3. The wages and salaries of employees working at the premises allocated to the manufacturing process.
4. The cost of operating the premises attributable to the manufacturing process.

The department’s determination is a fact-based determination based on the information provided by a manufacturer and the individual circumstances at issue.

EXAMPLE 1: Company A owns a centralized facility where it makes widgets and distributes them to several of its own retail stores for retail sale. The retail stores are not contiguous to the centralized facility. Company A purchases a widget maker for its centralized facility and seeks to claim this exemption. Because the widgets sold are sold at the retail stores, the sales of those widgets are sourced to the retail stores where the sales occur. Therefore, none of the sales are retail sales sourced to the centralized facility. Because Company A does not make retail sales sourced to the centralized facility, the centralized facility is not primarily used to make retail sales.

EXAMPLE 2A: Company A makes widgets at its premises in Iowa, known as Location 1. Company A sells its widgets to retailers for resale and also makes some retail sales that are sourced to Location 1.

Twelve months ago, Company A purchased and put into use at Location 1 a new molding machine for making new widgets. Company A paid tax on the sales price of the molding machine at the time of purchase. During the 12-month period after Company A first used the molding machine, 2 percent of the gross sales attributable to Location 1 were from retail sales sourced to Location 1 and 98 percent of the gross sales attributable to Location 1 were from sales of widgets to retailers.

Because less than half of the sales attributable to Location 1 during the 12-month period after the molding machine was first used at Location 1 were generated from retail sales sourced to Location 1, Location 1 is not primarily used to make retail sales. Therefore, if Company A's use of the molding machine satisfies all other requirements of the exemption, Company A's activities occurring on the premises constitute manufacturing.

EXAMPLE 2B: Same facts as in Example 2A, except that Company A also owns a second, noncontiguous premises in Iowa, known as Location 2. At Location 2, Company A operates a factory that makes the same types of widgets as Location 1. Company A also makes substantial retail sales that are sourced to Location 2.

Twelve months ago, Company A purchased new molding machines for Location 1 and Location 2. Company A paid tax on the sales price of the molding machines. During this 12-month period, 2 percent of the gross sales attributable to Location 1 were retail sales sourced to Location 1 and 98 percent of the gross sales attributable to Location 1 were from sales of widgets to distributors. Also during this 12-month period, 60 percent of the gross sales attributable to Location 2 were retail sales sourced to Location 2 and 40 percent of the gross sales attributable to Location 2 were from sales of widgets to distributors.

With respect to Location 1, the outcome is the same as in Example 1A. Because less than half of the sales attributable to Location 1 during the 12-month period after the molding machine was used at Location 1 were generated from retail sales sourced to Location 1, Location 1 is not primarily used to make retail sales.

However, Location 2 is presumed to be primarily used to make retail sales because more than half of the gross sales attributable to Location 2 are from retail sales sourced to Location 2.

EXAMPLE 2C: Same facts as in Example 2B. Company A decides to purchase new molding machines for both Location 1 and Location 2. Relying on the exemption determinations for the prior year, Company A pays sales tax on the purchase price of the molding machine for Location 2 but tenders an exemption certificate for the purchase of the molding machine for Location 1 and does not pay sales tax on that transaction.

Twelve months pass since the new molding machines were used at their respective locations. At Location 1, the gross sales attributable to the premises and retail sales sourced to the premises remained the same. However, at Location 2, Company A experienced a decrease in on-site retail sales and an increase in distribution sales. Because of a shift in sales, 45 percent of the gross sales attributable to Location 2 were retail sales sourced to Location 2, and 55 percent of the gross sales attributable to Location 2 were from sales of widgets to distributors.

Therefore, this year, Location 2 is no longer presumed to be primarily used to make retail sales because in the 12 months after the machine was used at Location 2, less than half of the gross sales attributable to Location 2 were from retail sales sourced to Location 2.

EXAMPLE 3A: Company A owns a premises on which it makes baseball bats. A portion of the premises is leased to Company B, which operates a retail store on the premises that sells clothing and is not commonly understood to be a manufacturer. Company A and Company B are unaffiliated entities.

Company A is seeking to purchase several new lathes to use in its bat production. In the last year, 95 percent of Company A's gross sales attributable to the premises came from selling bats to distributors, and 5 percent of Company A's gross sales attributable to the premises were from retail sales at a small on-site location. Also in the last year, 100 percent of Company B's gross sales attributable to the premises were from on-site retail sales.

Because Company A and Company B are not affiliated in any way, none of Company B's sales are attributable to Company A. Therefore, for purposes of Company A's determining its eligibility to claim the exemption, Company A's premises are not primarily used to make retail sales because less than half of its gross sales attributable to the premises are from retail sales sourced to the premises.

EXAMPLE 3B: Same facts as in Example 3A, except that Company B is an affiliate of Company A.

The result is the same; while Company B is an affiliate of Company A, the premises are not being operated for a common business purpose because Company B is not selling any of the bats manufactured by Company A. Therefore, none of Company B's business is attributable to Company A. For purposes of Company A's determining its eligibility to claim the exemption, Company A's premises are not primarily used to make retail sales because less than half of its gross sales attributable to the premises are from retail sales sourced to the premises.

EXAMPLE 3C: Same facts as in Example 3A, except that Company B is an affiliate of Company A and instead of operating a clothing store, Company B operates a sporting goods store where it sells some of the bats manufactured by Company A.

In this case, Company B's sales are attributable to Company A because both companies use the premises for a common business purpose: the sale of baseball bats manufactured by Company A. Therefore, the gross sales attributable to the premises of both Company A and Company B must be included in Company A's gross sales attributable to the premises. The premises will be presumed to be primarily used to make retail sales if the combined retail sales by Company A and Company B that are sourced to the premises exceed 50 percent of the gross sales attributable to the premises.

EXAMPLE 4: Company A owns premises not included in the list above at which it makes widgets. Company A sells 15 percent of its widgets by delivery to customers' homes, 30 percent to wholesalers, and the remaining 55 percent directly to customers who pick up widgets at the premises. Company A's premises is presumed to be primarily used to make retail sales.

Company A dedicates 75 percent of the square footage of the premises to the production of widgets, 20 percent to storage, and 5 percent to a loading dock. Company A employs a total of 50 people, 40 of whom work on the production floor making widgets. Company A's production staff accounts for 80 percent of its total wages and salaries paid to all employees. The cost of operating the widget production area accounts for 90 percent of Company A's total expenses. Upon claiming this exemption, Company A provides information satisfactory to the department to demonstrate these facts. Company A qualifies for the exemption.

215.15(6) Replacement parts and supplies.

a. Replacement parts. To qualify for exemption under this rule, replacement parts must satisfy the definition contained in Iowa Code section 423.3(47) "d." In addition to the other requirements, an exempt replacement part must replace a component of a computer, computer peripheral, machinery, or equipment that is directly and primarily used in processing by a manufacturer. Tangible personal property is not an exempt replacement part under this rule if the property exclusively replaces a component of a computer, computer peripheral, machinery, or equipment that is not directly and primarily used in processing by a manufacturer.

b. Supplies. To qualify for exemption under this rule, supplies must satisfy the definition contained in Iowa Code section 423.3(47) "d." In addition to the other requirements, an exempt supply must be connected to, be used in conjunction with, or come into physical contact with a computer, computer peripheral, machinery, or equipment that is directly and primarily used in processing by a manufacturer, or an exempt supply must itself be directly and primarily used in processing by a

manufacturer. Tangible personal property is not an exempt supply under this rule if the property exclusively is connected to, is used in conjunction with, or comes into physical contact with a computer, computer peripheral, machinery, or equipment that is not directly and primarily used in processing by a manufacturer.

This rule is intended to implement Iowa Code section 423.3(47) “a”(1).

701—215.16(423) Exemption for the sale of property directly and primarily used by a manufacturer to maintain integrity or unique environmental conditions. The sales price of computers, computer peripherals, machinery, equipment, replacement parts, supplies and materials used to construct or self-construct computers, computer peripherals, machinery, equipment, replacement parts, and supplies is exempt from sales and use tax when the property is directly and primarily used to maintain the integrity of the product or to maintain unique environmental conditions required for either the product or the computers, computer peripherals, machinery, and equipment used in processing by a manufacturer, including test equipment used to control quality and specifications of the product.

215.16(1) Required elements. To qualify for exemption under this rule, the purchaser must prove the property is:

a. Computers, computer peripherals, machinery, equipment, replacement parts, supplies, or materials used to construct or self-construct computers, computer peripherals, machinery, equipment, replacement parts, or supplies as described in subrule 215.14(2));

b. Directly used as described in subrule 215.15(2);

c. Primarily used as described in subrule 215.15(2);

d. Used by a manufacturer as described in subrule 215.15(4); and

e. Used to maintain:

(1) A manufactured product’s integrity;

(2) Unique environmental conditions required for a manufactured product; or

(3) Unique environmental conditions required for other computers, computer peripherals, machinery, equipment, replacement parts, or supplies directly and primarily used in processing by a manufacturer.

215.16(2) Replacement parts and supplies.

a. Replacement parts. To qualify for exemption under this rule, replacement parts must satisfy the definition contained in Iowa Code section 423.3(47) “d.” In addition to the other requirements, an exempt replacement part must replace a component of a computer, computer peripheral, machinery, or equipment that is directly and primarily used to maintain the integrity of the product or to maintain unique environmental conditions required for either the product or the computers, computer peripherals, machinery, and equipment used in processing by a manufacturer. Tangible personal property is not an exempt replacement part under this rule if the property exclusively replaces a component of a computer, computer peripheral, machinery, or equipment that is not directly and primarily used to maintain the integrity of the product or to maintain unique environmental conditions required for either the product or the computers, computer peripherals, machinery, and equipment used in processing by a manufacturer.

b. Supplies. To qualify for exemption under this rule, supplies must satisfy the definition contained in Iowa Code section 423.3(47) “d.” In addition to the other requirements, an exempt supply must be connected to, be used in conjunction with, or come into physical contact with a computer, computer peripheral, machinery, or equipment that is directly and primarily used to maintain the integrity of the product or to maintain unique environmental conditions required for either the product or the computers, computer peripherals, machinery, and equipment used in processing by a manufacturer, or an exempt supply must itself be directly and primarily used to maintain the integrity of the product or to maintain unique environmental conditions required for either the product or the computers, computer peripherals, machinery, and equipment used in processing by a manufacturer. Tangible personal property is not an exempt supply under this rule if the property exclusively is connected to, is used in conjunction with, or comes into physical contact with a computer, computer peripheral, machinery, or equipment that is not directly and primarily used to maintain the integrity of the product or to maintain

unique environmental conditions required for either the product or the computers, computer peripherals, machinery, and equipment used in processing by a manufacturer.

215.16(3) *Example of property directly and primarily used to maintain integrity or unique environmental conditions.* A manufacturer purchases a cooling system or heating system that qualifies as machinery. The manufacturer uses the system to directly and primarily maintain the proper temperature of other machinery and equipment. The manufacturer uses such machinery and equipment directly and primarily in processing. The system is not used for the comfort of the workers. Because the system directly and primarily maintains the environmental conditions necessary for machinery and equipment directly and primarily used in processing, the system is exempt from sales and use tax under this rule.

This rule is intended to implement Iowa Code section 423.3(47) “a”(2).

701—215.17(423) Exemption for the sale of property directly and primarily used in research and development of new products or processes of processing. The sales price of computers, computer peripherals, machinery, equipment, replacement parts, supplies, and materials used to construct or self-construct computers, computer peripherals, machinery, equipment, replacement parts, and supplies is exempt from sales and use tax when the property is directly and primarily used in research and development of new products or processes of processing.

215.17(1) Required elements. To qualify for exemption under this rule, the purchaser must prove the property is:

a. Computers, computer peripherals, machinery, equipment, replacement parts, supplies, or materials used to construct or self-construct computers, computer peripherals, machinery, equipment, replacement parts, or supplies as described in subrule 215.14(2);

b. Directly used as described in subrules 215.15(2) and 215.17(3);

c. Primarily used as described in subrule 215.15(2); and

d. Used in research and development as described in subrule 215.17(2) of:

(1) New products; or

(2) Processes of processing.

215.17(2) “Research and development” means experimental or laboratory activity that has as its ultimate goal the development of new products or processes of processing.

215.17(3) Property is used “directly” in research and development only if it is used in actual experimental or laboratory activity that qualifies as research and development under this rule.

215.17(4) Replacement parts and supplies.

a. Replacement parts. To qualify for exemption under this rule, replacement parts must satisfy the definition contained in Iowa Code section 423.3(47) “d.” In addition to the other requirements, an exempt replacement part must replace a component of a computer, computer peripheral, machinery, or equipment that is directly and primarily used in research and development of new products or processes of processing. Tangible personal property is not an exempt replacement part under this rule if the property exclusively replaces a component of a computer, computer peripheral, machinery, or equipment that is not directly and primarily used in research and development of new products or processes of processing.

b. Supplies. To qualify for exemption under this rule, supplies must satisfy the definition contained in Iowa Code section 423.3(47) “d.” In addition to the other requirements, an exempt supply must be connected to, be used in conjunction with, or come into physical contact with a computer, computer peripheral, machinery, or equipment that is directly and primarily used in research and development of new products or processes of processing, or an exempt supply must itself be directly and primarily used in research and development of new products or processes of processing. Tangible personal property is not an exempt supply under this rule if the property exclusively is connected to, is used in conjunction with, or comes into physical contact with a computer, computer peripheral, machinery, or equipment that is not directly and primarily used in research and development of new products or processes of processing.

215.17(5) Examples.

EXAMPLE A: Company A is a hybrid seed producer. Company A maintains a research and development laboratory for use in developing new varieties of corn seed. Company A purchases the following items for use in its research and development laboratory: a laboratory computer for

processing data related to the genetic structure of various corn plants, an electron microscope for examining the structure of corn plant genes, a steam cleaner for cleaning rugs in the laboratory offices, and office furniture for use in the laboratory offices. The laboratory computer and the microscope are “directly” used in the research in which the laboratory is engaged; the steam cleaner and the office furniture are not directly used in research. Therefore, the sales prices of the laboratory computer and the microscope are exempt from sales and use tax. The sales prices of the steam cleaner and the office furniture are not exempt from tax under this rule.

EXAMPLE B: Company B is a manufacturer of agricultural equipment. Company B is researching and developing a new tractor. Company B purchases materials to produce a prototype of its new tractor. The prototype tractor will be tested in various settings, including a laboratory and actual agricultural production. The materials used to produce the prototype tractor are exempt supplies directly and primarily used in research and production of new products. The sales price for the materials is exempt regardless of whether Company B sells the prototype tractor after testing, or if it scraps the prototype tractor after testing.

This rule is intended to implement Iowa Code section 423.3(47) “a”(3).

701—215.18 Reserved.

701—215.19(423) Exemption for the sale of property directly and primarily used in recycling or reprocessing of waste products. The sales price of computers, computer peripherals, machinery, equipment, replacement parts, supplies, and materials used to construct or self-construct computers, computer peripherals, machinery, equipment, replacement parts, and supplies is exempt from sales and use tax when the property is directly and primarily used in recycling or reprocessing of waste products.

215.19(1) Required elements. To qualify for exemption under this rule, the purchaser must prove the property is:

a. Computers, computer peripherals, machinery, equipment, replacement parts, supplies, or materials used to construct or self-construct computers, computer peripherals, machinery, equipment, replacement parts, or supplies as described in subrule 215.14(2);

b. Directly used as described in subrule 215.15(2);

c. Primarily used as described in subrule 215.15(2); and

d. Used in:

(1) Recycling of waste products as described in subrule 215.19(2); or

(2) Reprocessing of waste products as described in subrule 215.19(2).

215.19(2) Recycling and reprocessing.

a. “Recycling” is any process by which waste or materials that would otherwise become waste are collected, separated, or processed and revised or returned for use in the form of raw materials or products. Recycling includes, but is not limited to, the composting of yard waste that has been previously separated from other waste. Recycling does not include any form of energy recovery.

b. “Reprocessing” is not a subcategory of processing. Reprocessing of waste products is an activity separate and independent from the processing of tangible personal property.

c. Recycling or reprocessing generally begins when the waste products are collected or separated. Recycling or reprocessing generally ends when waste products are in the form of raw material or another nonwaste product. Activities that occur between these two points and are an integral part of recycling or processing qualify as recycling or reprocessing.

215.19(3) Replacement parts and supplies.

a. *Replacement parts.* To qualify for exemption under this rule, replacement parts must satisfy the definition contained in Iowa Code section 423.3(47) “d.” In addition to the other requirements, an exempt replacement part must replace a component of a computer, computer peripheral, machinery, or equipment that is directly and primarily used in recycling or reprocessing of waste products. Tangible personal property is not an exempt replacement part under this rule if the property exclusively replaces a component of a computer, computer peripheral, machinery, or equipment that is not directly and primarily used in recycling or reprocessing of waste products.

b. Supplies. To qualify for exemption under this rule, supplies must satisfy the definition contained in Iowa Code section 423.3(47) “*d.*” In addition to the other requirements, an exempt supply must be connected to, be used in conjunction with, or come into physical contact with a computer, computer peripheral, machinery, or equipment that is directly and primarily used in recycling or reprocessing of waste products, or an exempt supply must itself be directly and primarily used in recycling or reprocessing of waste products. Tangible personal property is not an exempt supply under this rule if the property exclusively is connected to, is used in conjunction with, or comes into physical contact with a computer, computer peripheral, machinery, or equipment that is not directly and primarily used in recycling or reprocessing of waste products.

215.19(4) Examples.

a. Computers, computer peripherals, machinery, and equipment that may be exempt from sales and use tax under this rule include, but are not limited to, compactors, balers, crushers, grinders, cutters, and shears if directly and primarily used in recycling or reprocessing.

b. End loaders, forklifts, trucks, conveyor systems, and other moving devices directly and primarily used in the movement of waste products during recycling or reprocessing may be exempt from sales and use tax under this rule.

c. A bin or other container used to store waste products before collection for recycling or reprocessing is not directly and primarily used in recycling or reprocessing, and its sales price is not exempt from sales and use tax under this rule.

d. A vehicle used directly and primarily for collecting waste products for recycling or reprocessing could be a vehicle used for an exempt purpose under this rule, and such a vehicle could be exempt from the fee for new registration. Thus, a garbage truck could qualify for this exemption if the truck is directly and primarily used in recycling; however, a garbage truck primarily used to haul garbage to a landfill does not qualify for exemption under this rule.

EXAMPLE A: Company A recycles household waste. Company A uses several machines in its facility to separate waste products into recyclable and nonrecyclable materials and to further separate the recyclable materials into paper, plastic, or glass. The sales prices of all separating machines are exempt from sales and use tax as machines directly and primarily used in recycling of waste products.

EXAMPLE B: Company B uses grinding machines to convert logs, stumps, pallets, crates, and other waste wood into wood chips. Company B then uses its trucks to deliver the wood chips to local purchasers. The sales prices of the grinding machines are exempt from sales and use tax as machines directly and primarily used in recycling or reprocessing of waste products. The trucks used to transport the wood chips are not used in recycling or reprocessing because the wood chips are in their final form when loaded onto the trucks.

This rule is intended to implement Iowa Code sections 321.105A(2) “*c*”(24) and 423.3(47) “*a*”(5).

701—215.20(423) Exemption for the sale of pollution-control equipment used by a manufacturer. The sales price of pollution-control equipment, including but not limited to equipment required or certified by an agency of Iowa or of the United States government, is exempt from sales and use tax when the property is used by a manufacturer.

215.20(1) Required elements. To qualify for exemption under this rule, the purchaser must prove the property is:

a. Pollution-control equipment as described in subrule 215.20(2); and

b. Used by a manufacturer as described in subrule 215.15(4).

215.20(2) “Pollution-control equipment” is any disposal system or apparatus used or placed in operation primarily for the purpose of reducing, controlling, or eliminating air or water pollution. Other property, including replacement parts and supplies, is not exempt under this rule. Pollution-control equipment does not include any apparatus used to eliminate noise pollution. Liquid, solid, and gaseous wastes are included within the meaning of the word “pollution.” Pollution-control equipment specifically includes, but is not limited to, any equipment the use of which is required or certified by an agency of this state or of the United States government. Wastewater treatment equipment, dust mitigation systems, and scrubbers used in smokestacks are examples of pollution-control equipment.

However, pollution-control equipment does not include any equipment used only for worker safety, such as a gas mask.

EXAMPLE: A manufacturer constructs a wastewater treatment facility to treat wastewater from its manufacturing facility. The wastewater treatment facility diverts wastewater from the local water treatment plant. The facility then converts wastewater into a biogas, which the manufacturer uses as an energy source in its manufacturing facility. The sales price of the pollution-control equipment used in the wastewater treatment facility is exempt from sales and use tax.

This rule is intended to implement Iowa Code section 423.3(47) “a”(6).

701—215.21(423) Exemption for the sale of fuel or electricity used in exempt property. The sales price of fuel or electricity consumed by computers, computer peripherals, machinery, or equipment that is exempt from sales and use tax under rule 701—215.14(423), 701—215.15(423), 701—215.16(423), 701—215.17(423), 701—215.19(423), or 701—215.20(423) is also exempt from sales and use tax. The sales price of electricity or other fuel consumed by replacement parts, supplies, computers, or computer peripherals used in processing or storage of data or information by an insurance company, financial institution, or commercial enterprise remains subject to tax even if such property is exempt under rules 701—215.14(423) through 701—215.20(423).

EXAMPLE: A manufacturer operates a power plant. The manufacturer uses energy from the power plant to operate machinery and equipment used directly and primarily in processing at its manufacturing facility. The fuel consumed in the manufacturer’s power plant is exempt from sales and use tax.

This rule is intended to implement Iowa Code section 423.3(47) “b.”

701—215.22(423) Exemption for the sale of services for designing or installing new industrial machinery or equipment. The sales price from the services of designing or installing new industrial machinery or equipment is exempt from sales and use tax. The enumerated services of electrical or electronic installation are included in this exemption.

215.22(1) Required elements. To qualify for the exemption, the purchaser must prove the service is:

- a. A design or installation service as described in subrule 215.22(2);
- b. Of new as described in subrule 215.22(3); and
- c. Industrial machinery or equipment as described in subrule 215.22(4).

215.22(2) Design or installation services include electrical and electronic installation. “Design or installation” services do not include any repair service.

215.22(3) “New” means never having been used or consumed by anyone. The exemption does not apply to design or installation services on reconstructed, rebuilt, repaired, or previously owned machinery or equipment.

215.22(4) Industrial machinery or equipment.

a. *Generally.* “Industrial machinery or equipment” means machinery or equipment, as defined in subrule 215.14(2). The sale of industrial machinery or equipment must also qualify for exemption under any of the following:

(1) Property used directly and primarily in processing by a manufacturer as described in rule 701—215.15(423).

(2) Property used directly and primarily by a manufacturer to maintain the integrity of the manufacturer’s product or to maintain unique environmental conditions for computers, computer peripherals, machinery, or equipment as described in rule 701—215.16(423).

(3) Property used directly and primarily in research and development of new products or processes of processing as described in rule 701—215.17(423).

(4) Property used directly and primarily in recycling or reprocessing of waste products as described in rule 701—215.19(423).

(5) Pollution-control equipment used by a manufacturer as described in rule 701—215.20(423).

b. *Exclusions.* The following property is not industrial machinery or equipment regardless of how the purchaser uses it:

- (1) Computers or computer peripherals as described in Iowa Code section 423.1.

- (2) Replacement parts as described in Iowa Code section 423.3(47) “d.”
- (3) Supplies as described in Iowa Code section 423.3(47) “d.”
- (4) Materials used to construct or self-construct computers, computer peripherals, machinery, equipment, replacement parts, or supplies as described in paragraph 215.14(2) “f.”

215.22(5) Billing. The sales price for designing or installing new industrial machinery or equipment must be separately identified, charged separately, and reasonable in amount for the exemption to apply. The exemption applies to new industrial machinery or equipment regardless of how it is purchased, including leased or rented machinery or equipment.

EXAMPLE: Dealer sells and installs two new machines for Manufacturer. Manufacturer uses one machine on its production floor, where the machine is directly and primarily used in processing. Manufacturer uses the other machine in its machine shop, where the machine is not directly and primarily used in processing. Dealer gives an invoice to Manufacturer that separately itemizes the sales prices for each machine and each installation. The machine used on the production floor is new industrial machinery or equipment, and the sales prices of the machine and its installation are exempt from sales and use tax. The machine used in the machine shop is not new industrial machinery or equipment, and the sales prices of the machine and its installation are taxable.

This rule is intended to implement Iowa Code section 423.3(48).

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 701—Chapter 217
“Telecommunication Services”

Iowa Code section(s) or chapter(s) authorizing rulemaking: 421.14, 422.68, and 423.42
State or federal law(s) implemented by the rulemaking: Iowa Code section 34A.7B and 423.3(47A)

Public Hearing

A public hearing at which persons may present their views orally or in writing will be held as follows:

November 8, 2023
9 a.m. to 12 noon

Via video/conference call:
meet.google.com/msc-ekdk-xws
PH: 262.864.1688
PIN: 672 555 995#

Public Comment

Any interested person may submit written or oral comments concerning this Regulatory Analysis. Written or oral comments in response to this Regulatory Analysis must be received by the Department of Revenue no later than 4:30 p.m. on the date of the public hearing. Comments should be directed to:

Nick Behlke
Department of Revenue
Hoover State Office Building
P.O. Box 10457
Des Moines, Iowa 50306-3457
Phone: 515.336.9025
Email: nick.behlke@iowa.gov

Purpose and Summary

The purpose of the proposed rulemaking is to rescind Chapter 217 and adopt a new Chapter 217. The Department proposes revisions to the chapter to remove portions of the rules that the Department determined are obsolete, unnecessary, or duplicative of statutory language. The chapter describes the Department’s interpretation of the underlying statute to help the public understand the taxability of telecommunication services. The chapter also contains definitions necessary for the State to maintain compliance with the Streamlined Sales and Use Tax Agreement (SSUTA).

Analysis of Impact

1. Persons affected by the proposed rulemaking:
 - Classes of persons that will bear the costs of the proposed rulemaking:
The proposed rules do not create costs for any class of persons.
 - Classes of persons that will benefit from the proposed rulemaking:
The public will benefit from clarification about the taxability of telecommunications services.
2. Impact of the proposed rulemaking, economic or otherwise, including the nature and amount of all the different kinds of costs that would be incurred:
 - Quantitative description of impact:
There is no economic impact from the proposed rules.
 - Qualitative description of impact:

The proposed rules reduce uncertainty about the taxability of telecommunication services. Failing to adopt them would lead to confusion, questions to the Department, and potential errors in determining what is taxable and what is exempt.

3. Costs to the State:

- Implementation and enforcement costs borne by the agency or any other agency:

There are no costs to the Department related to implementing the proposed rules beyond those that would otherwise be required to administer the statute.

- Anticipated effect on state revenues:

There is no anticipated effect on state revenues. However, the proposed rules clarify the taxability of telecommunication services, making it more likely that the correct amount of tax will be collected.

4. Comparison of the costs and benefits of the proposed rulemaking to the costs and benefits of inaction:

The cost of inaction would be failing to update the chapter to remove obsolete language and language that is duplicative of the statutory language. The benefits of the proposed rules are reducing confusion about the taxability of telecommunication services and maintaining compliance with the SSUTA.

5. Determination whether less costly methods or less intrusive methods exist for achieving the purpose of the proposed rulemaking:

The proposed rulemaking is not costly or intrusive. The purpose of the rules is to provide guidance on the taxability of telecommunication services. The Department considered the option of not having rules explaining the taxability of telecommunication services but determined that the rules provide useful clarification to the public and providers of telecommunication services.

6. Alternative methods considered by the agency:

- Description of any alternative methods that were seriously considered by the agency:

The Department considered the possibility of not providing rules on this topic but determined that the proposed rules provide useful guidance to the public beyond what is provided by the statutes.

- Reasons why alternative methods were rejected in favor of the proposed rulemaking:

Proceeding without these proposed rules would lead to confusion about the taxability of telecommunication services and would put the State out of compliance with the SSUTA.

Small Business Impact

If the rulemaking will have a substantial impact on small business, include a discussion of whether it would be feasible and practicable to do any of the following to reduce the impact of the rulemaking on small business:

- Establish less stringent compliance or reporting requirements in the rulemaking for small business.
- Establish less stringent schedules or deadlines in the rulemaking for compliance or reporting requirements for small business.
- Consolidate or simplify the rulemaking's compliance or reporting requirements for small business.
- Establish performance standards to replace design or operational standards in the rulemaking for small business.
- Exempt small business from any or all requirements of the rulemaking.

If legal and feasible, how does the rulemaking use a method discussed above to reduce the substantial impact on small business?

The proposed rulemaking does not have a substantial impact on small business. The rules do not make any special distinctions for small businesses. The rules do not impose any requirements on businesses, other than taxation requirements imposed by the underlying statutes.

Text of Proposed Rulemaking

ITEM 1. Rescind 701—Chapter 217 and adopt the following new chapter in lieu thereof:

CHAPTER 217
TELECOMMUNICATION SERVICES

701—217.1(423) Taxable telecommunication service and ancillary service. The sales price of all telecommunication service and ancillary service are subject to the sales or use tax.

701—217.2(423) Definitions.

217.2(1) Incorporation of definitions. To the extent they are consistent with Iowa Code chapter 423 and this chapter, all other words and phrases used in this chapter mean the same as defined in Iowa Code section 423.1.

217.2(2) Chapter-specific definitions. For purposes of this chapter, unless the context otherwise requires:

“800 service” means a telecommunication service that allows a caller to dial a toll-free number without incurring a charge for the call. The service is typically marketed under the name “800,” “855,” “866,” “877,” and “888” toll-free calling and any subsequent numbers designated by the Federal Communications Commission.

“900 service” means an inbound toll telecommunication service purchased by a subscriber that allows the subscriber’s customers to call in to the subscriber’s prerecorded announcement or live service. A 900 service does not include the charge for collection services provided by the seller of the telecommunication service to the subscriber or to services or products sold by the subscriber to the subscriber’s customer. The service is typically marketed under the name “900 service” and any subsequent numbers designated by the Federal Communications Commission.

“Ancillary services” means services that are associated with or incidental to the provision of a telecommunication service. “Ancillary services” includes, but is not limited to, detailed telecommunication billing, directory assistance, vertical service, and voice mail services.

“Conference bridging service” means an ancillary service that links two or more participants of an audio or video conference call and may include the provision of a telephone number. “Conference bridging service” does not include telecommunication services used to reach the conference bridge.

“Detailed telecommunication billing service” means an ancillary service of separately stating information pertaining to individual calls on a customer’s billing statement.

“Directory assistance” means an ancillary service of providing telephone number information and address information.

“Fixed wireless service” means a telecommunication service that provides radio communication between fixed points.

“Home service provider” means the same as defined in Section 124(5) of Public Law 106-252, 4 U.S.C. §124(5) (Mobile Telecommunications Sourcing Act). The home service provider is the facilities-based carrier or reseller with which the customer contracts for the provision of mobile telecommunication services.

“International” means a telecommunication service that originates or terminates in the United States and terminates or originates outside the United States, respectively. United States includes the District of Columbia or a U.S. territory or possession.

“Interstate” means a telecommunication service that originates in one United States state or a United States territory or possession and terminates in a different United States state or a United States territory or possession.

“In this state” means that telecommunication service is provided “in this state” only if both the points of origination and termination of the communication are within the borders of Iowa. Telecommunication service between any other points is “interstate” in nature and not subject to tax.

“Intrastate” means a telecommunication service that originates in one United States state or a United States territory or possession and terminates in the same United States state or a United States territory or possession.

“Mobile telecommunication service” means the same as that term is defined in Section 124(7) of Public Law 106-252, 4 U.S.C. §124(7) (Mobile Telecommunications Sourcing Act) and is a radio communication service carried on between mobile stations or receivers and land stations and by mobile stations communicating among themselves. More information is contained in Iowa Code section 423.2(9).

“Mobile wireless service” means a telecommunication service that is transmitted, conveyed, or routed regardless of the technology used, whereby the origination or termination point or both of the transmission, conveyance, or routing are not fixed, including, by example only, telecommunication services that are provided by a commercial mobile radio service provider.

“Paging service” means a telecommunication service that provides transmission of coded radio signals for the purpose of activating specific pagers. This transmission may include messages and sounds.

“Pay telephone service” means a telecommunication service provided through any pay telephone. “Pay telephone service” also includes coin-operated telephone service paid for by inserting money into a telephone accepting direct deposits of money to operate.

“Private communication service” means a telecommunication service that entitles the customer to exclusive or priority use of a communications channel or group of channels between or among termination points, regardless of the manner in which such channel or channels are connected, and includes switching capacity, extension lines, stations, and any other associated services that are provided in connection with the use of such channel or channels.

“Residential telecommunication service” means telecommunication services or ancillary services provided to an individual for personal use at a residential address, including an individual dwelling unit, such as an apartment. In the case of institutions where individuals reside, such as schools or nursing homes, telecommunication services are considered residential if they are provided to and paid for by an individual resident rather than the institution.

“Sales price from the sale of telecommunication service” or *“sales price”* means all charges to any person that are necessary for the end user to secure the service, except those charges that are in the nature of a sale for resale (more information is contained in subrule 217.4(9)). Such charges shall be taxable if the charges are necessary to secure telecommunication service in this state, even though payment of the charge may also be necessary to secure other services.

“Telecommunication service” means the electronic transmission, conveyance, or routing of voice, data, audio, video, or any other information or signals to a point, or between or among points. The term includes any transmission, conveyance, or routing in which computer processing applications are used to act on the form, code, or protocol of the content for purposes of transmission, conveyance, or routing without regard to whether such service is referred to as voice-over Internet protocol services or is classified by the Federal Communications Commission as enhanced or value-added. “Telecommunication service” does not include the following:

1. Data processing and information services that allow data to be generated, acquired, stored, processed, or retrieved and delivered by an electronic transmission to a purchaser where the purchaser’s primary purpose for the underlying transaction is the processed data or information;
2. Installation or maintenance of wiring or equipment on a customer’s premises;
3. Tangible personal property;
4. Advertising, including but not limited to directory advertising;
5. Billing and collection services provided to third parties;
6. Internet access service;
7. Radio and television audio and video programming services, regardless of the medium, including the furnishing of transmission, conveyance, or routing of the service by the programming

service provider. Radio and television audio and video programming services shall include but not be limited to cable service as defined in 47 U.S.C. §522.6 and audio and video programming services delivered by a commercial mobile radio service provider as defined in 47 CFR §20.3;

8. Ancillary services;

9. Digital products delivered electronically, including but not limited to software, music, video, reading materials or ring tones.

“Value-added non-voice data service” means a service that otherwise meets the definition of telecommunication service in which computer processing applications are used to act on the form, content, code, or protocol of the information or data primarily for a purpose other than transmission, conveyance, or routing.

“Vertical service” means an ancillary service that is offered in connection with one or more telecommunication services, which offers advanced calling features that allow customers to identify callers and to manage multiple calls and call connections. Nonexclusive examples of vertical service include call forwarding, caller ID, three-way calling, and conference bridging services.

“Voice mail service” means an ancillary service that enables the customer to store, send, or receive recorded messages. Voice mail service does not include any vertical services that the customer may be required to have in order to utilize the voice mail service.

This rule is intended to implement Iowa Code section 423.2(9).

701—217.3(423) Imposition of tax.

217.3(1) Taxable telecommunication service and ancillary service. The sales price of the sale of telecommunication service and ancillary service are subject to Iowa sales or use tax. The following is a nonexclusive list of taxable telecommunication services:

- a. Air-to-ground radio telephone service;
- b. Ancillary services except detailed communications billing service;
- c. Conference bridging service;
- d. Fixed wireless service;
- e. Mobile wireless service;
- f. Pay telephone service;
- g. Postpaid calling service;
- h. Prepaid calling service;
- i. Prepaid wireless calling service;
- j. Private communication service;
- k. Residential telecommunication service.

217.3(2) Other taxable services and circumstances. The following is a description of services and circumstances under which certain charges associated with telecommunication service are subject to tax:

a. *Long distance charges.* Charges imposed or approved by the utilities division of the department of commerce that are necessary to secure long distance service in this state, for example, “end user intrastate access charges,” are taxable. These charges are taxable whether they result from an expense incurred from operations or are imposed by the mandate of the utilities division and unrelated to any expense actually incurred in providing the service.

b. *Sales price of services performed by another company.* The sales price collected by a company (selling company) from the end users of telecommunication services and ancillary services performed in this state by another company (providing company) are considered to be the taxable sales price of the selling company. The situation is similar to a consignment sale of tangible personal property. Tax must be remitted by the selling company.

c. *Directory assistance.* Charges for directory assistance service rendered in this state are subject to tax.

d. *Electrical and electronic installation and repair.* The sales price of the installation or repair of any inside wire that provides electrical current that allows an electronic device to function is subject to tax. The sales price is from the enumerated service of electrical and electronic repair and installation. The sales price of inside wire maintenance charges for services performed under a service or warranty

contract is also subject to tax. Depending upon the circumstances, the sales price is for the enumerated service of electrical and electronic repair and installation or is incurred under an optional service or warranty contract for an enumerated service. In either event, the receipts are subject to tax.

e. Electrical and electronic installation and repair: billing methodology. The sales price of the repair or installation of inside wire or the repair or installation of any electronic device, including a telephone or telephone switching equipment, is subject to tax regardless of the method used to bill the customer for the service. These methods include but are not limited to:

- (1) A flat fee or a flat hourly charge that covers all costs, including labor and materials;
- (2) A premises visit or trip charge;
- (3) A single charge covering and not distinguishing between charges for labor and materials;
- (4) A charge with labor and material segregated; or
- (5) A charge for labor only.

f. Nonitemized taxes and charges. Any federal taxes or charges that are not separately stated or billed are subject to Iowa sales tax.

g. Rental of tangible personal property. The sales price of the rental of any device for home or office use or to provide a telecommunication service to others is taxable as the rental of tangible personal property. The sales price of rental includes rents, royalties, and copyright and license fees. Any periodic fee for maintenance of the device that is included in the sales price of the rental of the device is also subject to tax.

h. Sales of tangible personal property. The sale of any device, new or used, is subject to tax both when the device is in place on the customer's premises at the time of the sale and if the device is sold to the customer elsewhere. The sale of an entire inventory of devices may or may not be subject to tax, depending upon whether it qualifies for the casual sales exemption. More information is contained in Iowa Code section 423.3. Other exemptions may be applicable, as well.

i. Mandatory charges or fees. Any mandatory handling or other charges billed to a customer for sending the customer an electronic device by mail or by a delivery service are subject to tax. Charges for a mandatory service rendered in connection with the sale of tangible personal property are considered by the department to be a part of the sales price of the sale of the property itself and therefore subject to tax.

j. Deposits. Any portion of a deposit utilized by a company as payment for the sale of tangible personal property or a taxable service is subject to tax as part of the sales price.

k. Municipal utilities. Sales of telecommunication service and ancillary service to any tax-levying body used by or in connection with the operation of any municipally owned utility engaged in selling gas, electricity or heat to the general public are subject to tax. These sales are an exception to the exemption for federal and state government. More information is contained in subrule 217.4(5).

l. Fax. The service of sending or receiving any document commonly referred to as a "fax" from one point to another within this state is subject to sales tax.

EXAMPLE A: Company A is located in Des Moines, Iowa. Company A charges a customer \$2 to transmit a fax to Dubuque, Iowa. The \$2 is a taxable sales price. Midwest Telephone Company charges Company A \$500 per month for the intrastate communication service on the company's dedicated fax line. The \$500 is also a sales price from a taxable communication service.

EXAMPLE B: The XYZ Law Firm is located in Des Moines, Iowa. The firm owns a fax machine and uses the fax machine in the performance of its legal work to transmit and receive various documents. The firm does not perform faxing services but will, on billings for legal services to clients, separately state the amount of a billing that is attributable to expenses for faxing. For example, "bill to John Smith for \$1,000 for legal services performed, fax expenses that are part of this billing—\$30." The \$30 is not a sales price for the performance of any taxable service because the faxing service is only incidental to the performance of the nontaxable legal services.

This rule is intended to implement Iowa Code section 423.2(9).

701—217.4(423) Exempt from the tax. This rule provides various specific circumstances involving nontaxable telecommunication service and ancillary service. The following is a nonexclusive list of services that are not subject to the Iowa sales and use tax:

217.4(1) Detailed communications billing service.

217.4(2) Internet access fees or charges.

217.4(3) Value-added non-voice data service.

217.4(4) Separately stated and separately billed charges. Fees and charges that are separately stated and billed are exempt from the sales and use tax. This exemption includes the following items when separately stated and billed:

- a.* Fees and charges for securing only interstate telecommunication services.
- b.* Federal taxes.
- c.* Fees and charges for only interstate directory assistance.

217.4(5) Government entities. Sales of telecommunication service and ancillary service to the United States government or its agencies or to the state of Iowa or its agencies are not subject to sales or use tax. This exemption includes sales made to all divisions, boards, commissions, agencies or instrumentalities of federal, Iowa, county or municipal government. In order to be a sale to the United States government or to the state of Iowa, the government or agency involved must make the purchase of the services and pay the purchase price of the services directly to the vendor. Telecommunication service providers should obtain an exemption certificate from each agency for their records. An exception to this exemption is sales to any tax-levying body used by or in connection with the operation of any municipally owned utility engaged in selling gas, electricity or heat to the general public; such sales are subject to tax.

217.4(6) Private nonprofit educational institutions. Sales of telecommunication service and ancillary service to private, nonprofit educational institutions in this state for educational purposes are exempt from tax.

217.4(7) 911 surcharge. A 911 emergency telephone service surcharge is a surcharge for a service that routes a 911 call to the appropriate public safety answering point and automatically displays a name, address, and telephone number of an incoming 911 call at that answering point. A surcharge for 911 emergency telephone service is not subject to sales tax if:

- a.* The amount is no more than \$1 per month per telephone access line; and
- b.* The surcharge is separately identified and separately billed.

217.4(8) Return of deposit. The return to the customer of any portion of a deposit amount paid by that customer to a company providing telecommunication service is not subject to tax.

217.4(9) Resale exemption. A service or facility furnished by one telecommunication company to another commercial telecommunication company that the second telecommunication company then furnishes to its customers qualifies for the resale exemption under Iowa Code section 423.3(2), including any carrier access charges.

217.4(10) Online services. Any contracted online service is exempt from tax if the information is made available through a computer server. The exemption applies to all contracted online services, as long as they provide access to information through a computer server.

217.4(11) New construction. The repair or installation of inside wire or the repair or installation of any electronic device, including a telephone or telephone switching equipment, that is performed as part of or in connection with new construction, reconstruction, alteration, expansion or remodeling of a building or structure is exempt from Iowa tax. More information is contained in 701—Chapter 219.

This rule is intended to implement Iowa Code section 423.3.

701—217.5(423) Bundled transactions in telecommunication service. More information on general rules on bundled transactions is contained in 701—Chapter 206. In the case of a bundled transaction that includes telecommunication service, ancillary service, Internet access, or audio or video programming service, either separately or in combination:

217.5(1) If the price is attributable to products that are taxable and products that are nontaxable, the portion of the price attributable to the nontaxable products will be subject to tax unless the provider can identify by reasonable and verifiable standards the portion from the provider's books and records that are kept in the regular course of business for other purposes, including but not limited to nontax purposes.

217.5(2) If the price is attributable to products that are subject to tax at different tax rates, the total price may be treated as attributable to the products subject to tax at the highest tax rate, unless the provider can identify by reasonable and verifiable standards the portion of the price attributable to the products subject to tax at the lower rate from the provider's books and records that are kept in the regular course of business for other purposes, including but not limited to nontax purposes.

This rule is intended to implement Iowa Code section 423.2(8).

701—217.6(423) Sourcing telecommunication service.

217.6(1) The general sourcing principles found in Iowa Code section 423.15 apply to telecommunication services and ancillary services, unless the service falls under one of the exceptions set forth in subrule 217.6(2).

217.6(2) Exceptions. The following telecommunication services and products are sourced as follows:

a. Mobile telecommunication service is sourced to the place of primary use, unless the service is prepaid wireless calling service.

b. The sale of prepaid calling service or prepaid wireless calling service is sourced as provided under Iowa Code section 423.15. However, in the case of prepaid wireless calling service, Iowa Code section 423.15(1) "e" shall include as an option the location associated with the mobile telephone number.

EXAMPLE 1: An Iowa seller sells a prepaid wireless service airtime card to a consumer at an Iowa retail location. The sale of the prepaid wireless service will be sourced to Iowa.

EXAMPLE 2: An Iowa resident purchases a prepaid wireless service airtime card at a Nebraska retail location. The sale of the prepaid wireless service will be sourced to Nebraska.

EXAMPLE 3: An Iowa consumer with an Iowa billing and mailing address purchases prepaid wireless service through a retailer's website. No items are delivered. The sale would be sourced to the consumer's Iowa billing address.

EXAMPLE 4: A seller based in California uses a website to sell prepaid wireless services to consumers in a number of states. A consumer with an Iowa billing address and a Nebraska mailing address purchases prepaid wireless service from the seller's website. The consumer already owns a prepaid wireless phone; therefore, no item is delivered. Since there is no in-person transaction, and no item delivered, the sale would be sourced to the consumer's billing address in Iowa.

EXAMPLE 5: A seller based in California uses a website to sell prepaid wireless services to consumers in a number of states. A consumer with an Iowa mailing address and a Florida billing address purchases a prepaid wireless phone and 100 minutes of prepaid wireless service from the California seller. The prepaid wireless phone is shipped to the Iowa mailing address. The sale would be sourced to Iowa.

EXAMPLE 6: A consumer who is currently living in Iowa to attend a local university orders prepaid wireless service from a California seller through the seller's website. No items are delivered. The consumer uses a Nebraska billing address. The sale would be sourced to Nebraska.

c. A sale of a private telecommunication service is sourced as follows:

(1) Service for a separate charge related to a customer channel termination point is sourced to each level of jurisdiction in which the customer channel termination point is located.

(2) Service where all customer termination points are located entirely within one jurisdiction or levels of jurisdiction is sourced in the jurisdiction in which the customer channel termination points are located.

(3) Service for segments of a channel between two customer channel termination points located in different jurisdictions and which segments of channel are separately charged is sourced 50 percent in each level of jurisdiction in which the customer channel termination points are located.

(4) Service for segments of a channel located in more than one jurisdiction or levels of jurisdiction and which segments are not separately billed is sourced in each jurisdiction based on the percentage determined by dividing the number of customer channel termination points in the jurisdiction by the total number of customer channel termination points.

d. The sale of Internet access service is sourced to the customer's place of primary use.

e. The sale of an ancillary service is sourced to the customer's place of primary use.

f. A postpaid calling service is sourced to the origination point of the telecommunication signal as first identified by either:

- (1) The seller's telecommunication system; or
- (2) Information received by the seller from its service provider, where the system used to transport the signals is not that of the seller.

g. The sale of telecommunication service sold on a call-by-call basis is sourced to:

- (1) Each level of taxing jurisdiction where the call originates and terminates in that jurisdiction; or
- (2) Each level of taxing jurisdiction where the call either originates or terminates and in which the service address is also located.

h. The sale of telecommunication service sold on a basis other than a call-by-call basis is sourced to the customer's place of primary use.

i. The sale of the following telecommunication services is sourced to each level of taxing jurisdiction as follows:

(1) A sale of mobile telecommunication service, other than prepaid calling service, is sourced to the customer's place of primary use as required by the federal Mobile Telecommunications Sourcing Act.

(2) A sale of postpaid calling service is sourced to the origination point of the telecommunication signal as first identified by either the seller's telecommunication system or information received by the seller from its service provider, where the system used to transport such signals is not that of the seller.

This rule is intended to implement Iowa Code section 423.20.

701—217.7(423) General billing issues. This rule is specifically applicable to companies and other persons providing telecommunication service and ancillary service in this state.

217.7(1) Retailers liable for collecting and remitting tax. A retailer that sells taxable telecommunication service and ancillary service is liable for collecting and remitting the state sales or use tax and any applicable local sales tax on the amounts of the sales.

217.7(2) Billing date and tax period. A company that bills the company's subscribers for telecommunication service on a quarterly, semiannual, annual, or any other periodic basis must include the amount of those billings in the company's sales price. The date of the billing determines the period for which sales tax is remitted. For example, if the date of a billing is March 31, and the due date for payment of the bill without penalty is April 20, tax upon the sales price stated in the bill must be included in the sales tax return for the first quarter of the year. The same principle must be used to determine when tax will be included in payment of a sales tax deposit to the department.

217.7(3) Permitting business offices. A company must have a permit for each business office that provides telecommunication service in this state. The company must collect and remit tax upon the sales price of the operation of each office.

217.7(4) Credit. A taxpayer subject to sales or use tax on telecommunication service and ancillary service who has paid any legally imposed sales or use tax on such service to another jurisdiction outside the state of Iowa is allowed a credit against the sales or use tax imposed by the state of Iowa equal to the sales or use tax paid to the other taxing jurisdiction(s).

217.7(5) Direct pay permit not applicable to telecommunication services. The department may issue a direct pay permit that allows the holder to purchase tangible personal property or taxable services without payment of the tax to the seller. However, a direct pay permit holder cannot use the direct pay permit for the purchase of telecommunication services and ancillary services. The seller must charge and collect the sales or use tax from the purchaser on the taxable sales of telecommunication services and ancillary services.

217.7(6) Guaranteed amounts for coin-operated telephones. If a minimum amount is guaranteed to a company from the operation of any coin-operated telephone, tax is computed on the greater of the minimum amount guaranteed or the actual taxable sales price collected.

This rule is intended to implement Iowa Code section 423.36.

701—217.8(34A) Prepaid wireless 911 surcharge.

217.8(1) Definitions. The definitions in rule 701—217.2(423) apply to this rule. The following definitions are also applicable to this rule:

“*Consumer*” means a person who purchases prepaid wireless telecommunications service in a retail transaction.

“*Department*” means the department of revenue.

“*Prepaid wireless 911 surcharge*” means the surcharge that is required to be collected by a seller from a consumer in the amount established under this rule.

“*Provider*” means a person who provides prepaid wireless telecommunications service pursuant to a license issued by the Federal Communications Commission.

“*Retail transaction*” means the purchase of prepaid wireless telecommunications service from a seller for any purpose other than resale. If more than one separately priced item of prepaid wireless calling service is purchased by an end user, each item purchased shall be deemed to be a separate retail transaction.

Items of prepaid wireless calling service include but are not limited to prepaid wireless phones, prepaid wireless phone calling cards, rechargeable prepaid wireless phones, rechargeable prepaid wireless phone calling cards, and prepaid wireless service plans.

EXAMPLE 1: If a seller sells two prepaid wireless phone calling cards, two retail transactions have occurred.

EXAMPLE 2: If a seller sells additional minutes for a rechargeable prepaid wireless phone calling card that was purchased at an earlier date, a retail transaction has occurred.

EXAMPLE 3: If a seller sells three separate one-month service plans to a consumer during one sale, three retail transactions have occurred.

EXAMPLE 4: If the consumer has the ability to purchase additional minutes directly from a prepaid wireless phone, each time minutes are purchased, a retail transaction occurs.

“*Seller*” means a person who sells prepaid wireless telecommunications service to another person.

217.8(2) Registration. Each seller that sells prepaid wireless service must register according to the procedures established by the department. The department will make information regarding the procedures available to the public.

217.8(3) Collecting, filing, and remitting.

a. Each seller is responsible for collecting the applicable 911 surcharge from the consumer with respect to each retail transaction occurring in this state. A seller may determine whether the transaction occurs in this state by referring to the department rules on the sourcing of sales of prepaid wireless telecommunications service in paragraph 217.6(2) “b.” More information is also contained in Iowa Code sections 34A.7B(4), 423.15 and 423.20.

b. The surcharge must be separately itemized on the invoice, receipt or other similar document, or otherwise disclosed to the consumer.

c. The prepaid wireless 911 surcharge is the liability of the consumer and not of the seller or any provider, except that the seller shall be liable to remit all prepaid wireless 911 surcharges that the seller collects from consumers as provided in paragraph 217.8(3) “a,” including all such surcharges that the seller is deemed to collect where the amount of the surcharge has not been separately stated on an invoice, receipt, or similar document provided to the consumer by the seller.

d. The amount of the prepaid wireless 911 surcharge that is collected by a seller from a consumer, if such amount is separately stated on an invoice, receipt, or other similar document provided to the consumer by the seller, shall not be included in the base for measuring any tax, fee, other surcharge, or other charge that is imposed by this state, any political subdivision of this state, or any intergovernmental agency.

e. The seller must complete a 911 Surcharge Schedule and the surcharge portion of the Iowa Sales Tax and Surcharge Return or Iowa Retailer’s Use Tax and Surcharge Return and file the information with the department.

f. The schedule, return and the collected surcharge are due at the times provided by Iowa Code chapter 423 with respect to the sales and use tax.

g. The seller may deduct and retain 3 percent of prepaid wireless 911 surcharges that are collected by the seller from consumers.

h. The seller is not required to collect the surcharge if a minimal amount of prepaid wireless telecommunications service is sold in conjunction with a prepaid wireless device for a single, nonitemized price. A minimal amount of service is any service denominated as \$5 or less or ten minutes or less.

EXAMPLE: If a seller sells a prepaid wireless phone that comes with 10 minutes of service, and the price of the service is not itemized, the seller is not required to collect the surcharge. But if the seller sells a prepaid wireless phone with 15 minutes of service, the seller must collect the surcharge, regardless of whether the price of the service is itemized.

217.8(4) *Audit, appeal, and enforcement.*

a. The audit and appeal procedures applicable to sales and use tax under Iowa Code chapter 423 shall apply to the prepaid wireless 911 surcharge. More information is contained in Iowa Code sections 421.10 and 421.60.

b. Pursuant to the authority established in Iowa Code chapter 423, the department shall have the power to assess the seller for penalty and interest on any past due surcharge and exercise any other enforcement powers established in Iowa Code chapter 423. More information is contained in Iowa Code sections 421.7 and 421.27.

c. The seller shall maintain, and shall make available to the department for inspection for three years, its books and records in a manner that will permit the department to determine whether the seller has complied with or is complying with the provisions of Iowa Code section 34A.7B.

217.8(5) *Procedures for documenting that a sale is not a retail transaction.* The procedures for establishing that a sale of prepaid wireless telecommunications service is not a sale is similar to the procedure for documenting sale for resale transactions under Iowa Code chapter 423.

217.8(6) *Procedures for remitting the surcharge to the treasurer.* The department shall transfer all remitted prepaid wireless 911 surcharges to the treasurer of state for deposit in the 911 emergency communications fund created under Iowa Code section 34A.7A(2) within 30 days of receipt of the 911 surcharge from sellers. Prior to remitting the surcharges to the treasurer, the department shall deduct and retain an amount, not to exceed 2 percent of collected surcharges, to reimburse the department's direct costs of administering the collection and remittance of prepaid wireless 911 surcharges.

This rule is intended to implement Iowa Code section 34A.7B.

701—217.9(423) State sales tax exemption for central office equipment and transmission equipment. Central office equipment and transmission equipment primarily used in the furnishing of telecommunications services on a commercial basis are exempt when used by certain providers enumerated in Iowa Code section 423.3(47A) "a."

217.9(1) *Definitions.* The following definitions are applicable to this rule:

"Central office equipment" means the same as defined in Iowa Code section 423.3(47A) "b"(1).

"Transmission equipment" means the same as defined in Iowa Code section 423.3(47A) "b"(4).

217.9(2) *Central office equipment or transmission equipment.* The following are central office equipment or transmission equipment:

a. Stored program control digital switches and their associated equipment used to switch or route communication signals with a system from the origination point to the appropriate destination.

b. Peripheral equipment used to support the transmission of communications over the network, such as emergency power equipment, lightning arrestors, fault alarm equipment, multiplex equipment, digital cross connects, terminating equipment, fiber optic electronics, communication hardware equipment, and test equipment.

c. Circuit equipment that utilizes the message path to carry signaling information or that utilizes separate channels between switching offices to transmit signaling information independent of the subscribers' communication paths or transmission channels.

d. Radio equipment, including radio-transmitters and receivers utilized to transmit communication signals through the air from one location to another. Radio equipment also includes repeaters, which are located every 20 to 30 miles; at these points, radio signals are received, amplified and retransmitted.

217.9(3) *Not central office equipment or transmission equipment.* The following are not central office equipment or transmission equipment:

a. Telecommunications towers. These towers are structures and, as such, constitute real property. Real property is outside the scope of “equipment.”

b. Equipment shelters or enclosures erected on concrete or other foundations. These shelters or enclosures are structures and, as such, constitute real property. Real property is outside the scope of “equipment.”

c. Fencing erected around the telecommunications towers and equipment shelters or enclosures. This rule is intended to implement Iowa Code section 423.3(47A).

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 701—Chapter 272
“Flood Mitigation Program”

Iowa Code section(s) or chapter(s) authorizing rulemaking: 418.12 and 421.14
State or federal law(s) implemented by the rulemaking: Iowa Code chapter 418 and sections 423.2A(2) and 423.2A(3)

Public Hearing

A public hearing at which persons may present their views orally or in writing will be held as follows:

November 8, 2023
9 a.m. to 12 noon

Via video/conference call:
meet.google.com/msc-ekdk-xws
PH: 262.864.1688
PIN: 672 555 995#

Public Comment

Any interested person may submit written or oral comments concerning this Regulatory Analysis. Written or oral comments in response to this Regulatory Analysis must be received by the Department of Revenue no later than 4:30 p.m. on the date of the public hearing. Comments should be directed to:

Nick Behlke
Department of Revenue
Hoover State Office Building
P.O. Box 10457
Des Moines, Iowa 50306-3457
Phone: 515.336.9025
Email: nick.behlke@iowa.gov

Purpose and Summary

The purpose of this proposed rulemaking is to rescind Chapter 272 and adopt new Chapter 272, which consists of rules relating to the Department’s role in the administration of the Flood Mitigation Program. These rules are required under Iowa Code chapter 418. These rules interpret the underlying statutes about the calculation and remittance of the sales tax increment funding to projects approved under Iowa Code chapter 418. The Department proposes revisions to the rules to provide clarification and to remove portions of the rules that the Department has determined are unnecessary, obsolete, and duplicative of statutory language. The Department further proposes to add a rule to provide clarification about the administrative fee authorized under Iowa Code section 423.2A(3) that the Department retains from the amount it would otherwise distribute for the Flood Mitigation Program.

Analysis of Impact

1. Persons affected by the proposed rulemaking:

- Classes of persons that will bear the costs of the proposed rulemaking:

The proposed rulemaking does not impose costs beyond what is imposed by the underlying statutes.

- Classes of persons that will benefit from the proposed rulemaking:

The public, including local jurisdictions that receive the funding from this program, will benefit from information about the process the Department performs to calculate and remit flood mitigation funding and the administrative fee the Department retains from the amount it would otherwise distribute.

2. Impact of the proposed rulemaking, economic or otherwise, including the nature and amount of all the different kinds of costs that would be incurred:

- Quantitative description of impact:

There is no economic impact associated with these rules beyond what is provided in the underlying statutes.

- Qualitative description of impact:

The qualitative benefit of this rulemaking beyond what is already provided by the statute is the value of having rules that describe the process for calculating and remitting flood mitigation funding in order to reduce confusion and so that the public and those jurisdictions receiving funding have access to the information in the rules.

3. Costs to the State:

- Implementation and enforcement costs borne by the agency or any other agency:

There are no costs to the State beyond what is required to administer the relevant statutes, since they are procedural rules required to implement the underlying statutes. The Flood Mitigation Program funding is ongoing, and this proposed rulemaking does not provide any significant changes to this process. The rule relating to the calculation of the administrative fee authorized under Iowa Code section 423.2A(3) is an explanation of the fee that the Department already retains. Unnecessary and duplicative statutory language is removed from the rules as well.

- Anticipated effect on state revenues:

There are no anticipated effects on state revenues beyond what is contained in the statutes. The proposed rulemaking clarifies the process for calculating and remitting flood mitigation funding to qualified jurisdictions and calculating the administrative fee retained by the Department.

4. Comparison of the costs and benefits of the proposed rulemaking to the costs and benefits of inaction:

The cost of inaction would be the failure to comply with the statute's requirement that the Department adopt rules to describe the calculation and remittance of flood mitigation funding, which would lead to confusion. The benefit of this rulemaking is to provide the public and eligible jurisdictions with information and clarification about the calculation and remittance process, as well as clarification about the administrative fee authorized by statute that is retained by the Department.

5. Determination whether less costly methods or less intrusive methods exist for achieving the purpose of the proposed rulemaking:

The proposed rulemaking is not costly or intrusive. The purpose of the proposed rulemaking is to provide guidance on the Department's administration of flood mitigation funding, including the retention of an administrative fee by the Department. The Department did not consider the option of not having this proposed rulemaking since it is mandated by statute, but the Department also determined that the proposed rulemaking provides useful clarification to the public and eligible jurisdictions about flood mitigation funding.

6. Alternative methods considered by the agency:

- Description of any alternative methods that were seriously considered by the agency:

The Department did not consider the possibility of not providing this proposed rulemaking.

- Reasons why alternative methods were rejected in favor of the proposed rulemaking:

Proceeding without the proposed rulemaking would be defying the statute's mandates to adopt rules and would lead to confusion about the process for calculating and remitting flood mitigation funding.

If the rulemaking will have a substantial impact on small business, include a discussion of whether it would be feasible and practicable to do any of the following to reduce the impact of the rulemaking on small business:

- Establish less stringent compliance or reporting requirements in the rulemaking for small business.
- Establish less stringent schedules or deadlines in the rulemaking for compliance or reporting requirements for small business.
- Consolidate or simplify the rulemaking's compliance or reporting requirements for small business.
- Establish performance standards to replace design or operational standards in the rulemaking for small business.
- Exempt small business from any or all requirements of the rulemaking.

If legal and feasible, how does the rulemaking use a method discussed above to reduce the substantial impact on small business?

The rulemaking does not have a substantial impact on small business because it does not differentiate based on the size of an eligible business.

Text of Proposed Rulemaking

ITEM 1. Rescind 701—Chapter 272 and adopt the following new chapter in lieu thereof:

CHAPTER 272 FLOOD MITIGATION PROGRAM

701—272.1(418) Flood mitigation program. Iowa Code chapter 418 authorizes and governs the flood mitigation program to assist governmental entities in undertaking approved projects. This chapter sets forth rules for the department of revenue's administration of the calculation and remittance of the sales tax increment funding. The Iowa department of homeland security and emergency management's administrative rules for other aspects of this program are found at 605—Chapter 14.

This rule is intended to implement Iowa Code chapter 418 and sections 423.2(11), 423.2A(2) and 423.2A(3).

701—272.2(418) Definitions. For purposes of this chapter, terms mean the same as defined in Iowa Code chapter 418. Additionally, the following definitions apply:

“Corresponding quarter” means the quarter in the base year and the quarter in the year in which the increment is measured that end in the same month. For example, if the base year is fiscal year 2013 and the year in which the increment is first measured is 2014, then the quarter ending in September 2012 of the base year would correspond to the quarter ending in September 2014 of the calendar year.

“Department” means the Iowa department of revenue.

This rule is intended to implement Iowa Code section 418.1.

701—272.3(418) Sales tax increment calculation.

272.3(1) Sales tax increment calculation formula. The department will calculate quarterly the amount of the sales tax increment as described in Iowa Code section 418.11(2). To do so, the department will determine the base year for the flood mitigation project when the period for processing returns for the final quarter in the base year is complete.

272.3(2) Sales considered within the calculation formula. Only sales that are made by retail establishments in the area are taken into consideration when the sales subject to tax are determined. Sales otherwise sourced to the area are not considered in the calculation.

272.3(3) Identification of retailers. Each governmental entity that has established a project under Iowa Code chapter 418 must notify the department of retail establishments in the governmental entity's

applicable area that are collecting sales tax as soon as possible. This process shall be ongoing until the governmental entity ceases to utilize sales tax revenue under Iowa Code chapter 418.

This rule is intended to implement Iowa Code sections 418.11 and 423.2A(2).

701—272.4(418) Sales tax increment fund.

272.4(1) Deposits. For each governmental entity that establishes a flood mitigation project under Iowa Code chapter 418, the department will deposit collected funds into each applicable area's sales tax increment fund as described in Iowa Code section 418.12(3). Additionally, moneys will not be deposited in the fund before the period for processing returns is complete.

272.4(2) Requests for remittances; limitations.

a. Each quarter, the department will transfer into the sales tax increment fund the full amount of the increased sales tax subject to the limitations described in Iowa Code section 418.12(4)“*a.*” The director of the department may adjust the amount transferred during the year if it becomes apparent that the total amount transferred will exceed the limitations stated in this rule. If, when the total of all the transfers made to a governmental entity during the year is calculated at the end of the fiscal year, it is determined that the governmental entity received more than the maximum amount permissible under this rule, the department may withhold funds in the subsequent fiscal year to recoup the excess payments.

b. If the governmental entity has unused funds from a prior quarter in its account within the sales tax increment fund, subject to the limitations in Iowa Code section 418.12(4)“*a.*,” those funds will be available in subsequent quarters so long as the amount is necessary for the purposes of this chapter.

272.4(3) Authorized expenditures. Funds from requests for remittances made to the department by a governmental entity shall only be used for the governmental entities' costs or obligation to the project as described in Iowa Code section 418.13(1).

272.4(4) Remittance of funds to the general fund. The board shall assist the department in determining whether the fund or accounts within the fund have met the limitations found in Iowa Code section 418.12(5).

This rule is intended to implement Iowa Code sections 418.12, 418.13 and 423.2A(2).

701—272.5(418) Administrative fee.

272.5(1) Administrative fee. Pursuant to Iowa Code section 423.2A(3), the department will retain an administrative fee from the amount it would otherwise distribute to the flood mitigation program.

272.5(2) Amount retained. The amount retained each quarter will be the total of the prorated shares amongst all projects in both the flood mitigation program and the reinvestment districts program authorized under Iowa Code chapter 15J.

272.5(3) Prorated share. Each entity's prorated share of the administrative fee for each quarter will be calculated as follows:

$\frac{\text{Flood mitigation entity's distribution for the quarter}}{\text{Total distributions of both the flood mitigation and reinvestment districts for the quarter}}$	x	$\begin{array}{l} \text{Either \$25,000 or the} \\ \text{department's actual expenses,} \\ \text{whichever is less} \end{array}$
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This rule is intended to implement Iowa Code section 423.2A(3).

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 701—Chapter 273
“Reinvestment Districts Program”

Iowa Code section(s) or chapter(s) authorizing rulemaking: 15J.6 and 421.14
State or federal law(s) implemented by the rulemaking: Iowa Code chapter 15J and sections 423.2A(2) and 423.2A(3)

Public Hearing

A public hearing at which persons may present their views orally or in writing will be held as follows:

November 8, 2023
9 a.m. to 12 noon

Via video/conference call:
meet.google.com/msc-ekdk-xws
PH: 262.864.1688
PIN: 672 555 995#

Public Comment

Any interested person may submit written or oral comments concerning this Regulatory Analysis. Written or oral comments in response to this Regulatory Analysis must be received by the Department of Revenue no later than 4:30 p.m. on the date of the public hearing. Comments should be directed to:

Nick Behlke
Department of Revenue
Hoover State Office Building
P.O. Box 10457
Des Moines, Iowa 50306-3457
Phone: 515.336.9025
Email: nick.behlke@iowa.gov

Purpose and Summary

The purpose of this proposed rulemaking is to rescind Chapter 273 and adopt new Chapter 273, which consists of rules relating to the Department’s role in the administration of the Reinvestment Districts Program. These rules are required under Iowa Code chapter 15J. These rules interpret the underlying statutes about the calculation and remittance of the sales tax revenues to reinvestment district and reinvestment project funds pursuant to Iowa Code chapter 15J. The Department proposes revisions to the rules to provide clarification and to remove portions of the rules that the Department has determined are unnecessary, obsolete, and duplicative of statutory language. The Department also renumbered some rules due to other edits and for organizational reasons. The Department further proposes to add a rule to provide clarification about the administrative fee authorized under Iowa Code section 423.2A(3) that the Department retains from the amount it would otherwise distribute to the Reinvestment Districts Program.

Analysis of Impact

1. Persons affected by the proposed rulemaking:
 - Classes of persons that will bear the costs of the proposed rulemaking:
The proposed rulemaking does not impose costs beyond what is imposed by the underlying statutes.
 - Classes of persons that will benefit from the proposed rulemaking:
The public, including municipalities within a designated reinvestment district that receive the funding from this program, will benefit from information about the process the Department performs

to calculate and remit reinvestment district funding and the administrative fee the Department retains from the amount it would otherwise distribute.

2. Impact of the proposed rulemaking, economic or otherwise, including the nature and amount of all the different kinds of costs that would be incurred:

- Quantitative description of impact:

There is no economic impact associated with these rules beyond what is provided in the underlying statutes.

- Qualitative description of impact:

The qualitative benefit of this rulemaking beyond what is already provided by the statute is the value of having rules that describe the process for calculating and remitting Reinvestment Districts Program funding in order to reduce confusion and so that the public and those jurisdictions receiving funding have access to the information in the rules.

3. Costs to the State:

- Implementation and enforcement costs borne by the agency or any other agency:

There are no costs to the State beyond what is required to administer the relevant statutes. The Reinvestment Districts Program funding is ongoing, and this proposed rulemaking does not provide any significant changes to this process. The rule related to the calculation of the administrative fee authorized under Iowa Code section 423.2A(3) is an explanation of the fee that the Department already retains.

- Anticipated effect on state revenues:

There are no anticipated effects on state revenues beyond what is contained in the statutes. The proposed rulemaking clarifies the process for calculating and remitting reinvestment district funding to qualified jurisdictions and calculating the administrative fee retained by the Department.

4. Comparison of the costs and benefits of the proposed rulemaking to the costs and benefits of inaction:

The cost of inaction would be the failure to comply with the statute's requirement that the Department adopt rules to describe the calculation and remittance of reinvestment district funding, which would lead to confusion. The benefit of this rulemaking would be to provide the public and eligible jurisdictions with information and clarification about the calculation and remittance process as well as clarification about the administrative fee authorized by statute that is retained by the Department.

5. Determination whether less costly methods or less intrusive methods exist for achieving the purpose of the proposed rulemaking:

The proposed rulemaking is not costly or intrusive. The purpose of the proposed rulemaking is to provide guidance on the Department's administration of reinvestment district funding, including the retention of an administrative fee by the Department. The Department did not consider the option of not providing this proposed rulemaking since it is mandated by statute, but the Department also determined that the proposed rulemaking provides useful clarification to the public and eligible jurisdictions about reinvestment district funding.

6. Alternative methods considered by the agency:

- Description of any alternative methods that were seriously considered by the agency:

The Department did not consider the possibility of not providing this proposed rulemaking.

- Reasons why alternative methods were rejected in favor of the proposed rulemaking:

Proceeding without the proposed rulemaking would be defying the statutes' mandates to adopt rules and would lead to confusion about the process for calculating and remitting reinvestment district funding.

If the rulemaking will have a substantial impact on small business, include a discussion of whether it would be feasible and practicable to do any of the following to reduce the impact of the rulemaking on small business:

- Establish less stringent compliance or reporting requirements in the rulemaking for small business.
- Establish less stringent schedules or deadlines in the rulemaking for compliance or reporting requirements for small business.
- Consolidate or simplify the rulemaking's compliance or reporting requirements for small business.
- Establish performance standards to replace design or operational standards in the rulemaking for small business.
- Exempt small business from any or all requirements of the rulemaking.

If legal and feasible, how does the rulemaking use a method discussed above to reduce the substantial impact on small business?

The rulemaking does not have a substantial impact on small business since it does not differentiate based on the size of an eligible business.

Text of Proposed Rulemaking

ITEM 1. Rescind 701—Chapter 273 and adopt the following new chapter in lieu thereof:

CHAPTER 273 REINVESTMENT DISTRICTS PROGRAM

701—273.1(15J) Purpose and definitions. The Iowa Reinvestment Act provides for the reinvestment of as much as \$100 million in state hotel and motel and state sales tax revenues from revenue-generating projects within certain districts. The economic development authority board is authorized to oversee the implementation and administration of certain provisions of this program, including evaluating projects and making funding decisions. This chapter sets forth rules for the department of revenue's administration of the calculation, collection, and remittance of funds for this program. The economic development authority board's administrative rules about this program are found at 261—Chapter 200. Terms mean the same as defined in Iowa Code chapter 15J.

This rule is intended to implement Iowa Code chapter 15J.

701—273.2(15J) New state tax revenue calculations.

273.2(1) State sales tax. For districts established before July 1, 2020, the department will calculate the state sales tax revenues as described in Iowa Code section 15J.5(1)“b”(1). For those established on or after July 1, 2020, the calculations are as described in Iowa Code section 15J.5(1)“b”(2).

273.2(2) State hotel and motel tax. For districts established before July 1, 2020, the department will calculate the state hotel and motel tax revenues as described in Iowa Code section 15J.5(2)“b”(1). For those established on or after July 1, 2020, the calculations are as described in Iowa Code section 15J.5(2)“b”(2).

273.2(3) Identification of new retail establishments and lessors. Each municipality that has established a district under Iowa Code chapter 15J must notify the department of new retail establishments and lessors in the district that are created as soon as possible. This process shall be ongoing until the municipality ceases to utilize state sales tax revenue or state hotel and motel tax revenue under this chapter or the district is dissolved.

This rule is intended to implement Iowa Code sections 15J.5, 423.2(11) and 423A.6.

701—273.3(15J) State reinvestment district fund.

273.3(1) Deposits. The department shall deposit moneys into the appropriate district fund as described in Iowa Code section 15J.6; however, moneys shall not be deposited in the fund before the period for processing returns is complete.

273.3(2) Late-filed returns. Moneys described in Iowa Code section 15J.6 that are collected from late-filed returns shall be deposited in the fund. Such moneys shall be deposited following the period for processing returns for the quarter in which the late return is received, subject to the limitations of Iowa Code chapter 15J.

273.3(3) Refund claims. If the moneys described in Iowa Code section 15J.6 are the subject of a refund claim and that claim is granted by the department, the department may offset any refund at a later date against funds remitted to the district in which the new retail establishment or new lessor that had remitted the refunded tax amount is located.

This rule is intended to implement Iowa Code section 15J.6.

701—273.4(15J) Reinvestment project fund. State sales tax revenue and state hotel and motel tax revenue will be remitted by the department and deposited into reinvestment project funds as described in Iowa Code section 15J.7. Moneys deposited in the fund shall only be used to fund projects as described in Iowa Code section 15J.7(1) and not those projects described in Iowa Code section 15J.7(4).

This rule is intended to implement Iowa Code section 15J.7.

701—273.5(15J) End of deposits—district dissolution.

273.5(1) Cessation of deposits.

a. The department shall cease to deposit state sales tax revenues and state hotel and motel revenues once the limitations described in either Iowa Code section 15J.8(1) or 15J.8(2) are met.

b. The department shall cease to deposit new tax revenues into a district's account within the fund once the maximum benefit amount approved by the board for the district has been reached. If a district reaches the maximum benefit amount, the department shall notify the municipality and the board within a reasonable amount of time.

273.5(2) District dissolution.

a. If a municipality dissolves a district pursuant to Iowa Code section 15J.8(2), the municipality must notify the department as required by section 15J.8(2).

b. When a municipality is notified that its maximum benefit amount has been reached, the municipality shall dissolve the district by ordinance as soon as practicable after notification.

This rule is intended to implement Iowa Code section 15J.8.

701—273.6(15J) Administrative fee.

273.6(1) Administrative fee. Pursuant to Iowa Code section 423.2A(3), the department will retain an administrative fee from the amount it would otherwise distribute to the reinvestment district program.

273.6(2) Amount retained. The amount retained each quarter will be the total of the prorated shares amongst all projects in both the reinvestment districts programs and the flood mitigation program authorized under Iowa Code chapter 418.

273.6(3) Prorated share. Each entity's prorated share of the administrative fee for each quarter will be calculated as follows:

$$\frac{\text{Reinvestment district entity's distribution for the quarter}}{\text{Total distributions of both the flood mitigation and reinvestment districts for the quarter}} \times \begin{array}{l} \text{Either \$25,000 or the} \\ \text{department's actual expenses,} \\ \text{whichever is less} \end{array}$$

This rule is intended to implement Iowa Code section 423.2A(3).

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 701—Chapter 275
“Rebate of Iowa Sales Tax Paid”

Iowa Code section(s) or chapter(s) authorizing rulemaking: 423.4
State or federal law(s) implemented by the rulemaking: Iowa Code sections 423.2A and 423.4

Public Hearing

A public hearing at which persons may present their views orally or in writing will be held as follows:

November 8, 2023
9 a.m. to 12 noon

Via video/conference call:
meet.google.com/msc-ekdk-xws
PH: 262.864.1688
PIN: 672 555 995#

Public Comment

Any interested person may submit written or oral comments concerning this Regulatory Analysis. Written or oral comments in response to this Regulatory Analysis must be received by the Department of Revenue no later than 4:30 p.m. on the date of the public hearing. Comments should be directed to:

Nick Behlke
Department of Revenue
Hoover State Office Building
P.O. Box 10457
Des Moines, Iowa 50306-3457
Phone: 515.336.9025
Email: nick.behlke@iowa.gov

Purpose and Summary

The purpose of this proposed rulemaking is to rescind Chapter 275 and adopt new Chapter 275, which consists of rules relating to and interpreting sales and use tax rebates granted to sanctioned automobile racetrack facilities, baseball and softball complexes, and raceway facilities. The rules provide a rebate’s scope and applicability and the methods for obtaining a rebate by the eligible entities. The Department proposes revisions to the rules for clarification and removal of portions of the rules that the Department has determined are unnecessary and duplicative of statutory language. The Department also renumbered some rules due to other edits and for organizational reasons.

Analysis of Impact

1. Persons affected by the proposed rulemaking:

- Classes of persons that will bear the costs of the proposed rulemaking:

The proposed rulemaking may impose some costs on the eligible entities by requiring them to submit specific forms and information to obtain the rebate.

- Classes of persons that will benefit from the proposed rulemaking:

The public, including the eligible entities, will benefit from the proposed rulemaking since the rules provide information on a rebate’s scope, applicability, and form and the manner in which eligible entities may apply and obtain a rebate of the sales and use tax paid on sales occurring at the eligible entity. The rules provide guidance for the eligible entities on how to apply for the rebates and to help those entities understand what information to provide in order to obtain the rebates.

2. Impact of the proposed rulemaking, economic or otherwise, including the nature and amount of all the different kinds of costs that would be incurred:

- Quantitative description of impact:

There is no economic impact associated with these proposed rules beyond what is provided in statute. There may be some quantitative impact on eligible entities to fill out the appropriate forms to seek a rebate. However, seeking a rebate is voluntary. The rules prescribe the forms for obtaining the rebates, but these forms do not have an application fee or any other costs. The forms in conjunction with the proposed rulemaking may have a positive quantitative impact on eligible entities by clearly explaining the information required to obtain the refund and reducing the likelihood of confusion or uncertainty when applying for the rebate.

- Qualitative description of impact:

The qualitative benefit of this rulemaking beyond what is already provided by the statute is the value of having rules that describe the rebate process so that qualified entities have access to the information about a rebate's applicability and limitations to reduce confusion about what information is needed to process the rebates.

3. Costs to the State:

- Implementation and enforcement costs borne by the agency or any other agency:

There are no costs to the State beyond what is required to administer the relevant statutes because these are procedural rules required to implement the underlying statutes. These rebate programs are already ongoing, and this proposed rulemaking does not provide any significant changes to this process but adds clarification and removes unnecessary, outdated, and duplicative statutory language from the rules.

- Anticipated effect on state revenues:

There are no anticipated effects on state revenues beyond what is already contained in statute. The proposed rulemaking provides clarity about the process for eligible entities to obtain rebates from sales occurring at the eligible entity, making it more likely the correct amount is rebated.

4. Comparison of the costs and benefits of the proposed rulemaking to the costs and benefits of inaction:

The cost of inaction would be the failure to comply with the statutes' requirement that the Department establish procedures for the administration of the rebate processes, which the rules provide. The benefit of this proposed rulemaking is to provide eligible entities with information about the rebate process, requirements, and limitations so they can efficiently apply and obtain the rebate.

5. Determination whether less costly methods or less intrusive methods exist for achieving the purpose of the proposed rulemaking:

The proposed rulemaking is not costly or intrusive. The Department has considered what information to provide in the rules and what could be included on the forms used for the rebate process and concluded that this proposed rulemaking, in conjunction with the use of forms, will help guide eligible entities to provide the required information to process the rebate requests in an accurate and efficient manner.

6. Alternative methods considered by the agency:

- Description of any alternative methods that were seriously considered by the agency:

The Department considered the option of not providing rules for the rebate processes but determined that the proposed rulemaking, in conjunction with the use of forms, will provide useful information for eligible entities to obtain requested rebates in an efficient and accurate manner.

- Reasons why alternative methods were rejected in favor of the proposed rulemaking:

Proceeding without the proposed rulemaking would be defying the statutes' mandates about rules to administer the rebate processes and could harm eligible entities by limiting an eligible entity's knowledge about a rebate's applicability and the procedures related to obtaining a tax rebate.

Small Business Impact

If the rulemaking will have a substantial impact on small business, include a discussion of whether it would be feasible and practicable to do any of the following to reduce the impact of the rulemaking on small business:

- Establish less stringent compliance or reporting requirements in the rulemaking for small business.
- Establish less stringent schedules or deadlines in the rulemaking for compliance or reporting requirements for small business.
- Consolidate or simplify the rulemaking's compliance or reporting requirements for small business.
- Establish performance standards to replace design or operational standards in the rulemaking for small business.
- Exempt small business from any or all requirements of the rulemaking.

If legal and feasible, how does the rulemaking use a method discussed above to reduce the substantial impact on small business?

The proposed rulemaking does not have a substantial impact on small business since the underlying statute provides that tax rebates are only available to specific and defined entities.

Text of Proposed Rulemaking

ITEM 1. Rescind 701—Chapter 275 and adopt the following **new** chapter in lieu thereof:

CHAPTER 275
REBATE OF IOWA SALES TAX PAID

701—275.1(423) Sanctioned automobile racetrack facilities. Iowa Code section 423.4(5) provides for rebates of qualifying sales made at sanctioned automobile racetrack facilities. Definitions of key terms may be found in Iowa Code section 423.4(5) “a.”

275.1(1) Affidavit by owner or operator. The owner or operator of an automobile racetrack facility seeking a rebate allowed under Iowa Code section 423.4(5) of the sales tax imposed and collected by retailers upon sales of tangible personal property or services furnished to purchasers at the automobile racetrack facility must file with the department the following affidavit certifying that qualifications for the rebate have been met:

Iowa Department of Revenue Sales Tax Rebate Affidavit		
NAME OF AFFIANT	*	AFFIDAVIT FOR SANCTIONED AUTOMOBILE RACETRACK FACILITY
	*	
ADDRESS OF AFFIANT	*	
	*	

The undersigned duly swears that the named Automobile Racetrack Facility complies with criteria to be entitled to rebate of sales tax as required in Iowa Code section 423.4 as follows:

- a. The facility is sanctioned as an automobile racetrack facility;
- b. The sanctioned automobile racetrack facility is located as part of a racetrack and entertainment complex, including any museum attached to or included in the sanctioned automobile racetrack facility, but excluding any restaurant;
- c. The sanctioned automobile racetrack facility has not and will not receive any grants under the community attraction and tourism program pursuant to Iowa Code chapter 15F, subchapter II, or the vision Iowa program pursuant to Iowa Code chapter 15F, subchapter III;
- d. The sanctioned automobile racetrack facility is located on a maximum of 232 acres of Iowa land;

- e. The sanctioned automobile racetrack facility is located in a city with a population, as defined by this rule, of at least 14,500, but not more than 16,500;
- f. The city in which the sanctioned automobile racetrack facility is located is in a county with a population, as defined by this rule, of at least 35,000, but no more than 40,000;
- g. Construction of the sanctioned automobile racetrack facility was commenced on or before July 1, 2006;
- h. Cost of construction of the automobile racetrack facility upon completion is at least \$35 million; and
- i. There has not been a “change of control” as defined in the rules governing this program regarding the legal ownership or operation of the automobile racetrack facility.

The undersigned duly swears that he or she is the owner or operator of the sanctioned automobile racetrack facility or that the undersigned is the authorized representative of the sanctioned automobile racetrack facility and has the authority to sign this document. The undersigned swears that he or she has personal knowledge regarding the facts contained in this affidavit and that the statements set forth in this affidavit are true and accurate and that the sanctioned automobile racetrack facility has met all of the requirements as contained herein.

 Name of Affiant
 Position of Affiant

 Date

275.1(2) Notification to the department of revenue. The owner or operator of the automobile racetrack facility will provide the department with the identity of all retailers at the automobile racetrack facility that will be collecting sales tax and is required to keep the information current. The owner or operator of the automobile racetrack facility will notify the department within ten days of the termination of a retailer from collecting sales tax at the racetrack facility. In addition, the owner or operator of the automobile racetrack facility will notify the department within ten days of the start-up of a retailer collecting sales tax at the automobile racetrack facility.

275.1(3) Limitations. The automobile racetrack facility rebate program applies only to transactions that occur on or after January 1, 2006, but before the end date provided in Iowa Code section 423.4(5), and for which sales tax was collected. Only the state sales tax is subject to rebate. Local option taxes paid and collected are not subject to rebate. Rebates of sales taxes to an automobile racetrack facility are not authorized for transactions that occur on or after the date of the change of control of the automobile racetrack facility. The rebate is limited to 5 percent.

275.1(4) Termination of rebate program. The rebate program for automobile racetrack facilities terminates on the earliest of the dates listed in Iowa Code section 423.4(5) “g.”

275.1(5) Sourcing of sales. Advance ticket and admissions sales shall be considered occurring at the automobile racetrack facility regardless of where the transactions actually occur. Consequently, the state sales tax and any applicable local option tax in effect for the jurisdiction in which the automobile racetrack facility is located must be imposed.

Other types of sales eligible for rebate under this program include but are not limited to sales by vendors and sales at concessions, gift shops, and museums. However, sales by a restaurant on facility land are not subject to rebate.

275.1(6) Requirements to obtain a rebate of state sales tax by the racetrack facility. In order to obtain a rebate, a request is considered timely and complete when the authorized form containing all requested information is filed quarterly with the department.

This rule is intended to implement Iowa Code section 423.4(5).

701—275.2(423) Baseball and softball complex sales tax rebate.

275.2(1) Generally.

a. Rebate approval. An entity whose project pursuant to Iowa Code section 15F.207 is reviewed and recommended by the economic development authority and approved by the enhance Iowa board is

entitled to rebates of qualifying sales tax in accordance with Iowa Code section 423.4(10) and this rule, not to exceed the amount awarded by the economic development authority.

b. Qualifying rebates. Qualifying rebates of Iowa state sales tax may be made to the owner or operator of a complex as defined in this rule for sales occurring on or after the project completion date for a period of ten years or the date the award was made, whichever is later. Qualifying rebates are for state sales tax only. Local option taxes are not subject to rebate under this program.

275.2(2) Definitions. For the purpose of this program, the definitions found in Iowa Code section 423.4(10) apply. In addition, the following definitions apply:

“Department” means the department of revenue.

“Eligible baseball and softball complex” or *“complex”* means a facility located in this state that has a project completion date that is after July 1, 2016, is designed and built to host baseball and softball games and has a cost of construction upon completion that is at least \$10 million. The boundaries of a “complex” may be a portion or the entirety of a premises. After granting an award to a complex, the enhance Iowa board shall describe in writing to the department the physical boundaries of the complex and provide the department a map illustrating the approved boundaries of the complex.

“Placed into service” means the first day a complex is able to host a baseball or softball game.

275.2(3) Notification to the department of revenue. The owner or operator of the complex shall provide the department with a copy of the award notice from the enhance Iowa board.

275.2(4) Retailer identification.

a. Identification of retailers. The owner or operator shall provide the department with the identity of all retailers at the complex that will be collecting sales tax, provide sales tax permit numbers for each retailer, and keep the information current.

b. Notification to department. The owner or operator of the complex shall notify the department within ten days of the start-up or termination of a retailer collecting sales tax at the complex. For purposes of this subrule, termination occurs when the retailer provides notice to the owner or operator that the retailer will no longer collect sales tax at the complex or after one calendar year expires since the retailer collected sales tax at the complex.

c. Verification by department. The department shall verify the identity of a retailer collecting sales tax at the complex before rebates are paid for sales made by that retailer.

275.2(5) Baseball and softball complex rebate request form and filing requirements. To obtain the rebate, the owner or operator must submit a rebate request to the department on the authorized form furnished by the department. A properly completed form shall adhere to the following rules:

a. Who may file the claim. The claim must be filed by the owner or operator. Claims filed under the name of an affiliated entity will be denied.

b. Information regarding retailers making sales at the complex. The following information shall be provided:

- (1) Business name,
- (2) Responsible party,
- (3) Federal employer identification number (FEIN), and
- (4) Sales tax permit number, which must be associated with an address at the complex.

c. Sales at the complex. Information on sales at the complex and sales tax collected on those sales must be reported. Only sales by retailers meeting the requirements of paragraph 275.2(5) “b” and Iowa Code section 423.4(10) are eligible for rebate.

d. Additional information. The department may request any other additional information, from any person, necessary to verify the rebate.

e. Sworn statement. The department may require a sworn statement regarding the truthfulness and eligibility of the claim.

f. Filing frequency. The forms are due quarterly, on or before the last day of the month following the quarter in which the sales at the complex took place.

275.2(6) Fund transfers. The amount of sales tax revenues transferred from the general fund to the complex fund is that portion of sales tax receipts remaining in the general fund after other department transfers, as described in Iowa Code section 423.4(10) “e.”

275.2(7) Termination of rebate program. The rebate program terminates 30 days following the date on which \$5 million in total rebates has been provided. The rebate award for each complex terminates on the earliest of the following dates:

- a. Ten years after the project completion date; or
- b. The date on which total rebates equal to the amount of the rebate award have been provided to the complex; or
- c. The date of the change of control of the facility.

275.2(8) Sourcing of sales.

a. *Generally.* In general, sales are considered to occur “at the complex” if they occur within the boundaries identified in the physical description provided by the enhance Iowa board and are sourced to a location within those boundaries under Iowa Code section 423.15.

b. *Advance ticket and admissions sales.* Advance ticket and admissions sales shall be considered occurring at the baseball and softball complex regardless of where the transactions actually occur. Consequently, the state sales tax and any applicable local option tax in effect for the jurisdiction in which the facility is located must be imposed on the purchase price of advance ticket and admissions sales.

This rule is intended to implement Iowa Code section 423.4(10).

701—275.3(423) Raceway facility sales tax rebate. Qualifying rebates of Iowa state sales and use tax may be made to the owner or operator of a raceway facility that meets the requirements of Iowa Code section 423.4(11).

275.3(1) Definitions. For purposes of this rebate, unless further defined below, the terms used in this rule mean the same as defined in Iowa Code section 423.4(11). Additionally, “incurred date” means the date on which the payment for the project cost was made or the performance of the work that gave rise to the payment occurred, whichever is later.

275.3(2) Retailer identification.

a. *Identification of retailers.* The owner or operator shall provide the identity of all retailers at the raceway facility that will be collecting sales tax and provide the department with the sales tax permit number for each retailer. During the period in which rebates may be claimed, the owner or operator shall keep the information current.

b. *Notification to department.* The owner or operator shall notify the department within ten days of the termination or start-up of a retailer collecting sales tax at the raceway facility. For purposes of this subrule, termination occurs when the retailer provides notice to the owner or operator that the retailer will no longer collect sales tax at the raceway facility or after one calendar year expires since the retailer collected sales tax at the raceway facility.

c. *Verification by department.* The department shall verify the identity of a retailer collecting sales tax at the raceway facility before rebates are paid for sales made by that retailer.

275.3(3) Project cost report and rebate form and filing requirements. To request a rebate, the owner or operator must timely submit a project cost report and rebate request to the department on the authorized form, furnished by the department, in addition to the retailer sales report, as described in subrule 275.3(4). A properly completed rebate form shall contain the following:

a. *Documentation and information required.*

- (1) Invoices for project costs.
- (2) An explanation of how each cost meets the definition of “project costs.”
- (3) The date each cost was incurred and the date each cost was paid.

b. *Additional information.* The department may request any other additional information, from any person, necessary to verify the rebate.

c. *Sworn statement.* The department may require a sworn statement regarding the truthfulness and eligibility of the report.

d. *Filing frequency.* To be considered timely, the form and supporting documentation must be provided to the department within 90 days of the date the project cost was paid. Generally, this report is filed quarterly with the rebate request form; however, the project cost report may be filed more frequently

if necessary to meet the 90-day filing requirement. Project cost reports and rebate forms will not be accepted on or after the earliest date provided in Iowa Code section 423.4(11) “g.”

275.3(4) Raceway facility retailer sales report and filing requirements. The owner or operator must submit a retailer sales report to the department on the authorized form furnished by the department. A properly completed form shall contain the following.

a. Who may file the claim. Rebate claims shall only be filed by the owner or operator. Claims filed under the name of an affiliated entity will be denied.

b. Information regarding retailers making sales at the raceway facility. Retailer information must include:

- (1) Business name,
- (2) Responsible party,
- (3) Federal employer identification number (FEIN), and
- (4) Sales tax permit number.

c. Sales at the raceway facility. Sales occurring at the raceway facility and sales tax collected on those sales must be reported. Only sales by retailers meeting the requirements of paragraph 275.3(4) “b” and Iowa Code section 423.4(11) that occur during the time period specified in Iowa Code section 423.4(11) “c”(3) are eligible for the rebate.

d. Additional information. The department may request any other additional information, from any person, necessary to verify the rebate.

e. Sworn statement. The department may require a sworn statement by the retailer and the owner or operator regarding the truthfulness and eligibility of the claim.

f. Filing frequency. The forms are due quarterly, on or before the last day of the month following the quarter in which the sales at the raceway facility took place.

275.3(5) Sourcing of sales.

a. Generally. In general, sales are considered to occur at the raceway facility if they occur within the boundaries of the raceway facility portion of the fairgrounds and are sourced to that raceway facility under Iowa Code section 423.15.

b. Advance ticket and admissions sales. Advance ticket and admissions sales shall be considered occurring at the raceway facility regardless of where the transactions actually occur. Consequently, the state sales tax and any applicable local option tax in effect for the jurisdiction in which the raceway facility is located must be imposed on the sales price of advance ticket and admissions sales.

275.3(6) Local option sales tax. Local option taxes imposed under Iowa Code chapter 423B are not eligible for rebate under this program.

This rule is intended to implement Iowa Code section 423.4(11).

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 761—Chapters 511 and 607
“Commercial Driver’s Licenses and Commercial Learner’s Permits”

Iowa Code section(s) or chapter(s) authorizing rulemaking: 321.176B as amended by 2023 Iowa Acts, House File 335, section 2; 321.187 as amended by 2023 Iowa Acts, House File 257; 321.188 as amended by 2023 Iowa Acts, House File 258, section 2; 321.207 as amended by 2023 Iowa Acts, House File 258, section 3; and 321E.15

State or federal law(s) implemented by the rulemaking: Iowa Code section 321.176B as amended by 2023 Iowa Acts, House File 335, section 2; 321.187 as amended by 2023 Iowa Acts, House File 257; 321.188 as amended by 2023 Iowa Acts, House File 258, section 2; 321.207 as amended by 2023 Iowa Acts, House File 258, section 3; 321E.9 as amended by 2023 Iowa Acts, Senate File 153; and 321E.15; and 49 CFR 382.501(a); 49 CFR Section 383.107; 49 CFR 383.3(f); 49 CFR Section 383.5; 49 CFR Section 384.228; 49 CFR Part 383, Subpart E; and 49 CFR Part 384, Subpart B

Public Hearing

A public hearing at which persons may present their views orally or in writing will be held as follows:

November 13, 2023
10 a.m.

Motor Vehicle Division, First Floor Training Room
6310 SE Convenience Boulevard
Ankeny, Iowa

Public Comment

Any interested person may submit written comments concerning this Regulatory Analysis. Written comments in response to this Regulatory Analysis must be received by the Department of Transportation no later than 4:30 p.m. on the date of the public hearing. Comments should be directed to:

Kasey Lee
6310 SE Convenience Boulevard
Ankeny, Iowa 50021
Email: kasey.lee@iowadot.us

Purpose and Summary

The Department proposes to update Chapter 511 to conform the rules with 2023 Iowa Acts, Senate File 153, which amends Iowa Code section 321E.9 to provide additional flexibility for the Department or local authorities to issue a single-trip permit for indivisible overweight loads in special or emergency situations.

The Department also proposes to update Chapter 607 to conform the rules with 2023 Iowa Acts, House Files 257, 258 and 335. These proposed amendments do the following:

1. Allow additional entities to be eligible as a third-party commercial driver’s license (CDL) knowledge and skills tester, eliminate testing restrictions on Iowa-based motor carriers, and set requirements for new third-party testers for the percentage of tests provided to be for Iowa residents, in accordance with House File 257.

2. Establish the procedures the Department will follow to implement mandatory federal regulations for the national Drug and Alcohol Clearinghouse (DACH) as they relate to the issuance of CDLs and commercial learner’s permits (CLPs), in accordance with House File 258.

3. Adopt the federal language for restricted commercial driver’s licenses, which expands eligibility for CDL exemptions for more individuals employed in agricultural industries than Iowa law previously allowed, in accordance with Senate File 153.

Analysis of Impact

1. Persons affected by the proposed rulemaking:

- Classes of persons that will bear the costs of the proposed rulemaking:

The proposed amendments do not create additional costs for any classes of persons beyond what was anticipated as a result of the legislation. The legislation (House File 257 and Senate File 153) creates costs for two classes of persons:

(1) Colleges, universities, community colleges, government agencies, Iowa businesses, nonprofits and public or regional transit systems that choose to become third-party testers will have staffing or operational expenses associated with providing testing services. However, costs can be offset by charging a fee for testing services, determined by the third-party tester.

(2) Individuals who seek to obtain a single-trip permit to transport overweight indivisible loads in special or emergency situations will need to purchase the permit from the Department and may be subject to additional fees under Iowa Code section 321E.14 and subrule 511.5(15) for escorts, inspections, movement of buildings or obstructions, and other fair and reasonable costs for measures necessary to avoid damage to bridges and structures. The cost of the permit issued by the Department is \$35 (Iowa Code section 321E.14(1) and subrule 511.5(9)).

- Classes of persons that will benefit from the proposed rulemaking:

The proposed amendments that implement this legislation do not create additional benefits beyond what was anticipated as a result of legislation. The legislation created benefits for four classes of persons:

(1) Colleges, universities, government agencies, Iowa businesses, and nonprofits that were not previously eligible to become third-party testers will benefit by having the option to administer CDL knowledge and skills tests to applicants, including the public or current/prospective employees (House File 257).

(2) CDL applicants will benefit by having access to additional options for testing due to the increased availability of new third-party testers and reduced wait times for Department services for CLP and CDL issuance (House File 257).

(3) Businesses and employees of agrichemical businesses, custom harvesters, farm retail outlets and suppliers, and livestock feeders will benefit by being exempt from full CDL requirements and eligible for the restricted CDL. The industry will subsequently benefit from having an expanded pool of qualified drivers who can assist farmers during certain peak agricultural seasonal periods such as planting or harvesting (House File 335).

(4) Individuals or businesses seeking to move indivisible overweight loads in a single trip for special or emergency situations who would otherwise be unable to legally transport the load will benefit from being able to purchase a permit to transport these loads (Senate File 153).

2. Impact of the proposed rulemaking, economic or otherwise, including the nature and amount of all the different kinds of costs that would be incurred:

- Quantitative description of impact:

There are no additional quantitative impacts that were not already anticipated as a result of the legislation.

House File 257 provides positive quantitative impacts to colleges, universities, community colleges, government agencies, Iowa businesses, nonprofits, and public or regional transit systems, which will benefit by being able to assess a fee of their choosing to administer CDL knowledge and skills testing.

House File 258 will have a positive quantitative impact to all Iowans and the traveling public by ensuring Iowa is compliant with federal regulations to avert the loss of federal highway funds under 49 U.S.C. 31314 and 49 CFR 384.401 (National Highway Performance Program and the Surface Transportation Block Grant Program). These federal funds have a positive quantitative impact to the Road Use Tax Fund and the Primary Road Fund and ensure the Department maintains adequate funding for highway projects.

Senate File 153 will have a quantitative impact to permit applicants as described in the “costs” section above.

- Qualitative description of impact:

There are no additional qualitative impacts that were not already anticipated as a result of the legislation.

House File 257 provides qualitative impacts to Iowans by enabling additional third-party CDL testing, which will expand CDL testing availability and reduce customer wait times for appointments, document review, phone calls and other CDL-related services provided by the Department.

House File 335 provides qualitative impacts to farmers and employers within the agricultural industry and their employees by enabling them to obtain a restricted CDL, which is exempt from full CDL knowledge and skills testing.

Senate File 153 provides qualitative impacts to individuals and businesses who will now have an option to transport indivisible overweight loads that were previously ineligible for a trip permit.

3. Costs to the State:

- Implementation and enforcement costs borne by the agency or any other agency:

There are no additional implementation or enforcement costs in the amendments that were not already anticipated as a result of the legislation.

House File 257 requires that the Department conduct initial training and certification of all CDL skills test examiners employed by new third-party testers, refresher training every four years, approval of testing sites, and mandatory skills test auditing of each examiner every one to two years. The Department estimates that 20 new entities would desire to become third-party CDL testers with a total of approximately 40 CDL skills test examiners employed by the new testers. The costs associated with training and setting up any new third-party testers will be absorbed by existing staff who are responsible for CDL auditing and training, but the operational impact will come from the Motor Vehicle Division Operations appropriation.

House File 258 will require software programming efforts. The Motor Vehicle Division will absorb these efforts within its existing resources, spread throughout the next two years.

House File 335 does not require any implementation or enforcement costs to be borne by the Department.

Senate File 153 will not require any implementation and enforcement costs to be borne by the Department or other agencies since the issuance of these single-trip permits will be very infrequent, and the permit-issuing authority will assess the permittee for fair and reasonable costs associated with the load.

- Anticipated effect on state revenues:

There are no anticipated effects on state revenues in the amendments that were not already anticipated as a result of the legislation.

House Files 257 and 335 have no anticipated impact on state revenue.

House File 258 will have a positive annual fiscal impact on state revenues due to retained federal aid-highway funds in the amounts of \$22.2 million in fiscal year 2024 and \$44.4 million in fiscal year 2025 and each year thereafter.

Senate File 153 will not have an impact on state revenue since the issuance of these single-trip permits will be very infrequent and the permit costs \$35. Assuming the Department issues two permits a year, the revenue will total \$70 annually.

4. Comparison of the costs and benefits of the proposed rulemaking to the costs and benefits of inaction:

Implementing House File 257 in the proposed rulemaking will provide benefits in the form of time savings and reduced customer wait times for appointments, document review, phone calls and other services provided by the Department and in the form of increased access to CDL testing by the general public. There would be no monetary cost for inaction, and the Department and existing third-party testers would continue operating in their current manner. However, the cost of failing to implement House File 257 would be that the Department would be unable to authorize additional third-party testers and expand access to testing for CDL applicants.

Failure to implement House File 258 in the proposed rulemaking would create a significant negative financial impact to the Department and local governments through the loss of federal-aid highway funds to the Department, and a significant operational impact to the 187,000 licensed CDL/CLP holders through the loss of ability to issue federally recognized commercial driving privileges.

5. Determination whether less costly methods or less intrusive methods exist for achieving the purpose of the proposed rulemaking:

Since the proposed amendments do not impose any requirements beyond those contained in authorizing legislation, no less costly or less intrusive methods exist to achieve this purpose.

6. Alternative methods considered by the agency:

- Description of any alternative methods that were seriously considered by the agency:

The Department did not consider alternative methods for the proposed amendments that implement House File 258 and House File 335. The Department is required by federal law to implement these regulations as they are written.

For House File 257, the Department considered decreasing or increasing the amount of the bond a third-party tester is required to maintain. The amount of bond required prior to the enactment of House File 257 was \$50,000. The requirement that third-party testers maintain a bond (in the amount the State determines) is established in 49 CFR 383.75.

For House File 257, the Department considered different percentage thresholds for the number of knowledge and skills tests that should be administered specifically to Iowa applicants by third-party testers in a calendar year in order to maintain certification as a third-party tester. The Department also considered not specifying a minimum percentage of Iowa applicants that must be tested by the tester in order to maintain certification, which is consistent with what the current administrative rules in Chapter 607 provide.

- Reasons why alternative methods were rejected in favor of the proposed rulemaking:

For the bond amount (House File 257), the Department surveyed the bond amounts other state driver's license agencies require third-party testers to maintain in order to research how Iowa's requirement compared. From the research, the Department found that Iowa's requirement of a \$50,000 bond was an amount similar to what is required in many other states. Because the \$50,000 amount is in line with what many other states require, the Department rejected the alternative of changing the amount.

For the third-party testing percentage threshold (House File 257), the Department reviewed data from current third-party testers (community colleges, Iowa-based motor carriers, Iowa Motor Truck Association (IMTA), and public/regional transit agencies). The data showed the following out-of-state testing percentages:

- (1) Community colleges: 0-29 percent of tests administered to out-of-state students.
- (2) Public/regional transit: 0 percent of tests administered to out-of-state students.
- (3) IMTA: 0 percent of tests administered to out-of-state students.
- (4) Iowa-based motor carriers: 93-96 percent of tests administered to out-of-state students.

As a result, the Department determined that a minimum of 50 percent was an equitable figure for the number of knowledge and skills tests that should be administered to Iowa applicants in a calendar year for most third-party testers. The Department also determined that a minimum of 10 percent for third-party testers that seek to test out-of-state employees or prospective employees would ensure that employers are able to maintain their operations in Iowa, which often necessitates recruiting, training, and hiring out-of-state drivers. Further, the proposed amendments ensure that the Iowa-based motor carriers that are currently certified as third-party testers may continue their operations and do not need to meet the 10 percent threshold at this time as they are "grandfathered" in.

The Department believes that these thresholds balance the goal of House File 257 to expand access for CDL testing for Iowans with the economic interests of third-party testers that may wish to provide a large volume of tests in order to maximize their earning potential as a third-party tester and to train and recruit employees from other states. The Department also considered the significant amount of time

and resources required to train and certify third-party examiners and determined it was within the goal of the legislation to ensure those resources were utilized for the benefit of Iowans to the greatest extent possible.

Small Business Impact

If the rulemaking will have a substantial impact on small business, include a discussion of whether it would be feasible and practicable to do any of the following to reduce the impact of the rulemaking on small business:

- Establish less stringent compliance or reporting requirements in the rulemaking for small business.
- Establish less stringent schedules or deadlines in the rulemaking for compliance or reporting requirements for small business.
- Consolidate or simplify the rulemaking's compliance or reporting requirements for small business.
- Establish performance standards to replace design or operational standards in the rulemaking for small business.
- Exempt small business from any or all requirements of the rulemaking.

If legal and feasible, how does the rulemaking use a method discussed above to reduce the substantial impact on small business?

The proposed amendments have no impact on small business beyond what was anticipated as a result of legislation.

House File 257 will provide a positive impact to Iowa small businesses that are interested in becoming third-party testers. However, the Department is unable to exempt or establish less stringent training or certification requirements for small businesses since they are federally mandated requirements that the Department does not have the authority to alter.

Text of Proposed Rulemaking

ITEM 1. Amend rule **761—511.4(321E)**, implementation sentence, as follows:

This rule is intended to implement Iowa Code sections 321E.2, 321E.3, 321E.8, 321E.9 as amended by 2023 Iowa Acts, Senate File 153, and 321E.29B.

ITEM 2. Amend rule **761—511.5(321,321E)**, implementation sentence, as follows:

This rule is intended to implement Iowa Code sections 321.12, 321.122, 321E.8, 321E.9 as amended by 2023 Iowa Acts, Senate File 153, 321E.14, 321E.29, 321E.29A and 321E.30.

ITEM 3. Amend rule **761—511.6(321E)**, implementation sentence, as follows:

This rule is intended to implement Iowa Code sections 321E.8, 321E.9 as amended by 2023 Iowa Acts, Senate File 153, 321E.13 and 321E.29B.

ITEM 4. Amend rule **761—511.13(321,321E)**, implementation sentence, as follows:

This rule is intended to implement Iowa Code sections 321.454, 321.456, 321.457, 321.463, 321E.2, and 321E.3 and section 321E.9 as amended by 2023 Iowa Acts, Senate File 153.

ITEM 5. Amend paragraph **511.17(4)“a”** as follows:

a. For movement under a single-trip permit, the gross weight on any axle shall not exceed 20,000 pounds unless authorized under Iowa Code section 321E.9(2) as amended by 2023 Iowa Acts, Senate File 153.

ITEM 6. Amend rule **761—511.17(321,321E)**, implementation sentence, as follows:

This rule is intended to implement Iowa Code sections 321.463, 321E.7, 321E.8, 321E.9 as amended by 2023 Iowa Acts, Senate File 153, 321E.9A, 321E.26, 321E.29B and 321E.32.

ITEM 7. Amend rule **761—607.3(321)**, definition of “Commercial driver’s license downgrade,” as follows:

“Commercial driver’s license downgrade” or “CDL downgrade” means either: the same as defined in 49 CFR Section 383.5 (October 1, 2023).

1. ~~The driver changes the driver’s self-certification of type of driving from non-excepted interstate to excepted interstate, non-excepted intrastate, or excepted intrastate driving, or~~

2. ~~The department removed the CDL privilege from the driver’s license.~~

ITEM 8. Adopt the following **new** definition of “National drug and alcohol clearinghouse” in rule **761—607.3(321)**:

“National drug and alcohol clearinghouse” means the database maintained by the Federal Motor Carrier Safety Administration as defined in 49 CFR Section 382.107 (October 1, 2023).

ITEM 9. Amend rule **761—607.3(321)**, implementation sentence, as follows:

This rule is intended to implement Iowa Code sections 321.1, 321.174, 321.188 as amended by 2023 Iowa Acts, House File 258, section 2, 321.191, 321.193, 321.207 as amended by 2023 Iowa Acts, House File 258, section 3, and 321.208.

ITEM 10. Adopt the following **new** paragraph **607.10(1)“e”**:

e. 49 CFR Part 384, Subpart B (October 1, 2023).

ITEM 11. Amend rule 761—607.30(321) as follows:

761—607.30(321) Third-party testing.

607.30(1) Purpose and definitions. The knowledge tests required by rule 761—607.27(321) and the skills test required by rule 761—607.28(321) may be administered by third-party testers and third-party test examiners approved and certified by the department. For the purpose of administering third-party testing and this rule, the following definitions shall apply:

“College or university” means an Iowa postsecondary school established under Iowa Code chapter 261B.

“Community college” means an Iowa community college established under Iowa Code chapter 260C.

“Iowa-based motor carrier” means a motor carrier or its subsidiary that has its principal place of business in the state of Iowa and operates a permanent commercial driver training facility in the state of Iowa.

“Iowa nonprofit corporation” means a nonprofit corporation that serves as a trade association for Iowa-based motor carriers.

“Government agency” means the same as defined in Iowa Code section 553.3.

“Iowa business” means a corporation, association, partnership, company, firm, or other aggregation of individuals that has an established place of business in this state and that is authorized to conduct business in this state.

“Knowledge test” means the knowledge tests required by rule 761—607.27(321).

“Motor carrier” means the same as defined in 49 CFR Section 390.5.

“Nonprofit” means a corporation or association that satisfies the requirements under Iowa Code chapter 498 or 504.

“Permanent commercial driver training facility” means a facility dedicated to a program of commercial driving instruction that is offered to employees or potential employees of the motor carrier as incident to the motor carrier’s commercial operations, that requires at least 40 hours of instruction, and that includes fixed and permanent structures and facilities for the off-road portions of commercial driving instruction, including classroom, pretrip inspection, and basic vehicle control skills. A permanent commercial driver training facility must include a fixed and paved or otherwise hard-surfaced area for basic vehicle control skills testing that is permanently marked and capable of inspection and measurement by the department.

“Public transit system” means the same as defined in Iowa Code section 324A.1.

“Regional transit system” means the same as defined in Iowa Code section 324A.1.

“Skills test” means the skills test required by rule 761—607.28(321).

“Subsidiary” means a company that is partly or wholly owned by a motor carrier that holds a controlling interest in the subsidiary company.

“Third-party test examiner” means the same as defined in Iowa Code section 321.187 ~~as amended by 2022 Iowa Acts, Senate File 2337.~~

“Third-party tester” means the same as defined in Iowa Code section 321.187 ~~as amended by 2022 Iowa Acts, Senate File 2337.~~

607.30(2) Certification of third-party testers.

a. The department may certify as a third-party tester ~~a community college, Iowa-based motor carrier, Iowa nonprofit corporation, public transit system or regional transit system~~ testers to administer knowledge tests and skills tests. ~~A community college, Iowa-based motor carrier, Iowa nonprofit corporation, public transit system or regional transit system~~ third-party tester must be one of the following entities:

- (1) A college or university.
- (2) A community college.
- (3) A government agency.
- (4) An Iowa business.
- (5) A nonprofit.
- (6) A public transit system or regional transit system.

b. An entity listed in paragraph 607.30(2) “a” that seeks certification as a third-party tester shall contact the motor vehicle division and schedule a review of the proposed testing program, which shall include the proposed testing courses and facilities, information sufficient to identify all proposed third-party test examiners, and any other information necessary to demonstrate compliance with 49 CFR Parts 383 and 384 as amended to October 1, 2023, applicable to knowledge and skills testing.

b. c. ~~No community college, Iowa-based motor carrier, Iowa nonprofit corporation, public transit system or regional transit system~~ entity shall be certified to conduct third-party testing unless and until the community college, Iowa-based motor carrier, Iowa nonprofit corporation, public transit system or regional transit system entity enters an agreement with the department that meets the requirements of 49 CFR Section 383.75 and demonstrates sufficient ability to conduct knowledge and skills tests in a manner that consistently meets the requirements of 49 CFR Parts Part 383, Subpart E, and 49 CFR Part 384, Subpart B, applicable to knowledge and skills testing.

c. d. The department shall issue a certified third-party tester a certificate of authority that identifies the classes and types of vehicles for which knowledge and skills tests may be administered. The certificate shall be valid for the duration of the agreement executed pursuant to paragraph ~~607.30(2) “b,”~~ 607.30(2) “c,” unless revoked by the department for engaging in fraudulent activities related to conducting knowledge and skills tests or failing to comply with the requirements, qualifications, and standards of this chapter, the agreement, or 49 CFR Parts Part 383, Subpart E, and 49 CFR Part 384, Subpart B, applicable to knowledge and skills testing.

e. The department shall revoke a certificate of authority issued after July 1, 2023, to a third-party tester if the third-party tester fails to administer a minimum of 50 percent of all knowledge and skills tests given in a calendar year to Iowa applicants. However, the department shall not revoke a certificate of authority of a third-party tester who administers a minimum of 10 percent of all knowledge and skills tests given in a calendar year to Iowa applicants if the remainder of the tests are given to current or prospective employees of the third-party tester. For the purpose of this paragraph, an “Iowa applicant” is defined as an individual who holds a valid commercial learner’s permit, commercial driver’s license, noncommercial driver’s license, or nonoperator identification card issued by the department or who otherwise qualifies as a resident of this state under Iowa Code section 321.1A(1).

607.30(3) Certification of third-party test examiners.

a. A certified third-party tester shall not employ or otherwise use as a third-party test examiner a person who has not been approved and certified by the department to administer knowledge or skills tests. Each certified third-party tester shall submit for approval the names of all proposed third-party test examiners to the department. The department shall not approve as a third-party test examiner a person

who does not meet the requirements, qualifications, and standards of 49 CFR ~~Parts~~ Part 383, Subpart E, and 49 CFR Part 384, Subpart B, applicable to knowledge and skills testing, including but not limited to all required training and examination and a nationwide criminal background check. The criteria for passing the nationwide criminal background check shall include no felony convictions within the last ten years and no convictions involving fraudulent activities.

b. No change.

c. The department shall revoke the certificate of authority for a third-party test examiner to administer skills tests if the person holding the certificate does not administer skills tests to at least ten different applicants per calendar year; does not successfully complete the refresher training required by 49 CFR Section 384.228 every four years; is involved in fraudulent activities related to conducting knowledge or skills tests; or otherwise fails to comply with and meet the requirements, qualifications and standards of this chapter or 49 CFR ~~Parts~~ Part 383, Subpart E, and 49 CFR Part 384, Subpart B, applicable to knowledge and skills testing. Notwithstanding anything in this paragraph to the contrary, as provided in 49 CFR Section 383.75, if the person does not administer skills tests to at least ten different applicants per calendar year, the certificate will not be revoked for that reason if the person provides proof of completion of the examiner refresher training in 49 CFR Section 384.228 to the department or successfully completes one skills test under the observation of a department examiner.

d. The department shall revoke the certificate of authority for a third-party test examiner to administer knowledge tests if the person holding the certificate does not successfully complete the refresher training required by 49 CFR Section 384.228 every four years, is involved in fraudulent activities related to conducting knowledge or skills tests or otherwise fails to comply with and meet the requirements, qualifications and standards of this chapter or 49 CFR ~~Parts~~ Part 383, Subpart E, and 49 CFR Part 384, Subpart B, applicable to knowledge testing.

e. and *f.* No change.

607.30(4) No change.

~~**607.30(5)** *Limitation applicable to Iowa-based motor carriers.* An Iowa-based motor carrier certified as a third-party tester may only administer the knowledge or skills test to persons who are enrolled in the Iowa-based motor carrier's commercial driving instruction program and shall not administer knowledge or skills tests to persons who are not enrolled in that program.~~

607.30(6) ~~**607.30(5)**~~ *Training and refresher training for third-party test examiners.* All training and refresher training required under this rule shall be provided by the department, in form and content that meet the recommendations of the American Association of Motor Vehicle Administrators' International Third-Party Examiner/Tester Certification Program.

This rule is intended to implement Iowa Code section 321.187 as amended by ~~2022 Iowa Acts,~~ Senate File 2337, section 1 ~~2023 Iowa Acts,~~ House File 257.

ITEM 12. Amend rule 761—607.49(321) as follows:

761—607.49(321) Restricted commercial driver's license.

607.49(1) *Scope.* This rule pertains to the issuance of restricted commercial driver's licenses to ~~suppliers or employees of suppliers of agricultural inputs.~~ Issuance is the following designated farm-related service industries: agrichemical businesses, custom harvesters, farm retail outlets and suppliers and livestock feeders as permitted by 49 CFR 383.3(f). A restricted commercial driver's license shall meet all requirements of a regular commercial driver's license, as set out in Iowa Code chapter 321 and this chapter of rules, except as specified in this rule.

~~**607.49(2)** *Agricultural inputs.* The term "agricultural inputs" means suppliers or applicators of agricultural chemicals, fertilizer, seed or animal feeds.~~

607.49(3) ~~**607.49(2)**~~ *Validity.*

a. A restricted commercial driver's license allows the licensee to drive a commercial motor vehicle for agricultural input purposes. The license is valid to:

(1) Operate Group B and Group C commercial motor vehicles including tank vehicles and vehicles equipped with air brakes, except passenger vehicles.

(2) Transport the hazardous materials listed in paragraph ~~607.49(3)~~ "*b.*" 607.49(2) "*b.*"

- (3) Operate only during the current, validated seasonal period.
- (4) Operate between the employer's place of business and the farm currently being served, not to exceed 150 miles.

b. and c. No change.

~~607.49(4)~~ 607.49(3) Requirements.

a. No change.

b. The applicant must have a good driving record for the most recent two-year period, as defined in subrule ~~607.49(5)~~ 607.49(4).

c. No change.

~~607.49(5)~~ 607.49(4) Good driving record. A "good driving record" means a driving record showing:

a. to d. No change.

~~607.49(6)~~ 607.49(5) Issuance.

a. to h. No change.

This rule is intended to implement Iowa Code section 321.176B as amended by 2023 Iowa Acts, House File 335, section 2.

ITEM 13. Renumber rule **761—607.51(321)** as **761—607.52(321)**.

ITEM 14. Adopt the following new rule 761—607.51(321):

761—607.51(321) National drug and alcohol clearinghouse.

607.51(1) Applicability. This rule applies to:

- a. An applicant for or holder of a commercial learner's permit,*
- b. An applicant for or holder of a commercial driver's license,*
- c. An applicant seeking to transfer a commercial driver's license from a prior state of domicile to the state of Iowa,*
- d. An applicant seeking renewal of a commercial driver's license,*
- e. An applicant seeking to upgrade a commercial driver's license or add an endorsement authorizing the operation of a commercial motor vehicle not covered by the current commercial driver's license, or*
- f. An applicant for or holder of a restricted commercial driver's license.*

607.51(2) Issuance procedures. Prior to issuing the license or permit, the department shall request information from the national drug and alcohol clearinghouse to determine if the person is prohibited from operating a commercial motor vehicle pursuant to 49 CFR 382.501(a). The department shall not issue, renew, transfer, or upgrade the license or permit if the person is prohibited from operating a commercial motor vehicle pursuant to 49 CFR 382.501(a). However, this subrule shall not take effect prior to the date established by the Federal Motor Carrier Safety Administration in 49 CFR Part 383.73 for state driver's license agency compliance with national drug and alcohol clearinghouse requirements.

607.51(3) CDL downgrade. Upon receiving notification that pursuant to 49 CFR 382.501(a) the person is prohibited from operating a commercial motor vehicle, the department shall downgrade the license or permit and record the downgrade on the CDLIS driver record within 60 days of the department's receipt of such notification. However, this subrule shall not take effect prior to the date established by the Federal Motor Carrier Safety Administration in 49 CFR Section 383.73 for state driver's license agency compliance with national drug and alcohol clearinghouse requirements. The downgrade will be initiated and completed as follows:

a. The department shall give the person written notice that the person is prohibited from operating a commercial motor vehicle due to notification the department received from the national drug and alcohol clearinghouse that the person has engaged in conduct prohibited by 49 CFR 382.501(a) and that upon receipt of the notification, the department initiated a downgrade of the person's CLP or CDL.

b. If the department receives notification that the person is no longer prohibited from operating a commercial motor vehicle before the downgrade is completed, the department shall terminate the downgrade process without removing the CLP or CDL privilege from the driver's license, transmit the information to the person's CDLIS driver record, and send written notice to the person.

c. If, after the downgrade is completed, the department receives notification from the national drug and alcohol clearinghouse that a driver is no longer prohibited from operating a commercial motor vehicle, the department shall record the end of the downgrade on the person's CDLIS driver record, reinstate the CLP or CDL privilege to the driver's license, and send written notice to the person.

d. If, after the downgrade is completed, the department receives notification from the national drug and alcohol clearinghouse that the person was erroneously identified as prohibited from operating a commercial motor vehicle, the department shall reinstate the CLP or CDL privilege to the driver's license as expeditiously as possible and remove from the CDLIS driver record and driving record any reference related to the person's erroneous prohibited status.

607.51(4) *Limitation on hearing and appeal.* An informal settlement, hearing, or appeal to contest the downgrade is limited to a determination of whether the facts required by Iowa Code sections 321.188 and 321.207 and this rule are true. The merits of the information conveyed by the national drug and alcohol clearinghouse to the department shall not be considered.

This rule is intended to implement Iowa Code sections 321.188 as amended by 2023 Iowa Acts, House File 258, section 2, and 321.207 as amended by 2023 Iowa Acts, House File 258, section 3.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 811—Chapter 1
“Description of Organization and Definitions”

Iowa Code section(s) or chapter(s) authorizing rulemaking: 169.5
State or federal law(s) implemented by the rulemaking: Iowa Code chapter 169

Public Hearing

A public hearing at which persons may present their views orally or in writing will be held as follows:

November 13, 2023
10 a.m.

Second Floor Conference Room
Wallace State Office Building
Des Moines, Iowa

Public Comment

Any interested person may submit written comments concerning this Regulatory Analysis. Written comments in response to this Regulatory Analysis must be received by the Board of Veterinary Medicine no later than 4:30 p.m. on the date of the public hearing. Comments should be directed to:

Colin Tadlock
Iowa Department of Agriculture and Land Stewardship
Wallace State Office Building
502 East 9th Street
Des Moines, Iowa 50319
Email: colin.tadlock@iowaagriculture.gov

Purpose and Summary

Proposed Chapter 1 provides the public with information about the organization, headquarters, and meetings of the Board. It also includes definitions to assist the public in understanding and interpreting the Board’s rules.

Analysis of Impact

1. Persons affected by the proposed rulemaking:

- Classes of persons that will bear the costs of the proposed rulemaking:

There are no costs because this chapter does not impose any requirements on the public or regulated community.

- Classes of persons that will benefit from the proposed rulemaking:

The public and regulated community will benefit from the proposed rules because the rules provide definitions to assist with understanding the Board’s rules.

2. Impact of the proposed rulemaking, economic or otherwise, including the nature and amount of all the different kinds of costs that would be incurred:

- Quantitative description of impact:

There is little, if any, quantitative impact from the proposed rules because there are no costs since this chapter does not impose any requirements on the public or regulated community.

- Qualitative description of impact:

There is little, if any, qualitative impact from the proposed rules because there are no costs since this chapter does not impose any requirements on the public or regulated community.

3. Costs to the State:

- Implementation and enforcement costs borne by the agency or any other agency:

This chapter does not contain any requirements to enforce, only definitions, so there are no costs incurred by the Board to implement or enforce these rules.

- Anticipated effect on state revenues:

There is no anticipated effect on state revenues.

4. Comparison of the costs and benefits of the proposed rulemaking to the costs and benefits of inaction:

Failure to have definitions could lead to increased costs to the Board and State as more staff time will be required to answer questions from the public and regulated community about compliance with the Board's rules.

5. Determination whether less costly methods or less intrusive methods exist for achieving the purpose of the proposed rulemaking:

There does not appear to be any less costly method because the definitions need to be included in Chapter 1 to properly inform the public and regulated community about the Board's requirements.

6. Alternative methods considered by the agency:

- Description of any alternative methods that were seriously considered by the agency:

No alternative methods were considered.

- Reasons why alternative methods were rejected in favor of the proposed rulemaking:

No alternative methods were considered.

Small Business Impact

If the rulemaking will have a substantial impact on small business, include a discussion of whether it would be feasible and practicable to do any of the following to reduce the impact of the rulemaking on small business:

- Establish less stringent compliance or reporting requirements in the rulemaking for small business.
- Establish less stringent schedules or deadlines in the rulemaking for compliance or reporting requirements for small business.
- Consolidate or simplify the rulemaking's compliance or reporting requirements for small business.
- Establish performance standards to replace design or operational standards in the rulemaking for small business.
- Exempt small business from any or all requirements of the rulemaking.

If legal and feasible, how does the rulemaking use a method discussed above to reduce the substantial impact on small business?

There are no costs since this chapter does not impose any requirements on the public or regulated community, so the rules do not have a substantial impact on small business.

Text of Proposed Rulemaking

ITEM 1. Rescind 811—Chapter 1 and adopt the following **new** chapter in lieu thereof:

CHAPTER 1 DESCRIPTION OF ORGANIZATION AND DEFINITIONS

811—1.1(17A,169) Organization and duties. The board of veterinary medicine has a membership as established in Iowa Code section 169.5(1)“a.” One public member may be a graduate of an

AVMA-accredited school of veterinary technology and be credentialed in Iowa as a veterinary technician. The state veterinarian serves as secretary. The board may administer examinations to applicants for a license or temporary permit to practice veterinary medicine and to applicants for licenses or certificates for auxiliary personnel. The board investigates and disciplines, as necessary, persons for whom credentials have been issued or who are engaged in an activity regulated by the board.

811—1.2(17A,169) Headquarters of the board. The official mailing address of the board is: Iowa Board of Veterinary Medicine, Iowa Department of Agriculture and Land Stewardship, Wallace State Office Building, 502 E. 9th Street, Des Moines, Iowa 50319-0053.

811—1.3(17A,169) Meetings. The board meets once a year at its headquarters and may hold additional meetings as necessary for the purpose of administering examinations and conducting its duties. The organizational meeting is the first board meeting of the fiscal year. The fiscal year begins July 1. Three members constitute a quorum authorized to act in the name of the board.

811—1.4(17A,169) Definitions. As used in the rules of the board, unless the context otherwise entails:

“*AAVSB*” means the American Association of Veterinary State Boards.

“*AVMA*” means the American Veterinary Medical Association.

“*AVMA-accredited*” means colleges in the United States and foreign colleges evaluated by the AVMA Council on Education and found to meet accreditation standards as published.

“*AVMA-listed*” means a foreign college recognized by the World Health Organization or the government of its own country whose graduates are eligible to practice veterinary medicine in that country and whose graduates may qualify for entrance in the ECFVG certification program.

“*Board*” means the same as defined in Iowa Code section 169.3(4).

“*Certificate*” means a credential issued by the board to practice on an animal as a certified veterinary student pursuant to 811—subrule 6.7(3).

“*Certificate holder*” means a person issued a certificate by the board.

“*Client*” means the patient’s owner, owner’s designee, or other person responsible for the patient.

“*Client consent*” means that the licensed veterinarian has informed the client of the reasonable and usual diagnostic and treatment options available and provides an assessment of the risks and benefits of such choices, the prognosis and an estimate of the fees expected for the provision of services. The consent of the client shall be provided in verbal or written form prior to initiation of diagnostic and treatment procedures and documented in the medical record by the licensed veterinarian or staff. Consent is valid if it indicates that the client’s questions have been answered to the client’s satisfaction and that the client consents to the recommended treatments or procedures.

“*Credential*” means, as applicable, a certificate, license, or permit issued by the board.

“*Credential holder*” means a person who holds a certificate, license, or permit issued by the board.

“*Department*” means the Iowa department of agriculture and land stewardship.

“*Direct supervision*” means that a licensed veterinarian is on the premises and is readily available.

“*ECFVG*” means the Educational Commission for Foreign Veterinary Graduates.

“*Emergency*” means that an animal has been placed in a life-threatening condition and immediate treatment is necessary to sustain life, or that death is imminent and action is necessary to relieve extreme pain or suffering.

“*ICVA*” means the International Council for Veterinary Assessment.

“*License*” means a credential issued by the board that permits a person to practice veterinary medicine.

“*Licensee*” means a person holding a license issued by the board.

“*NAVLE*” means the North American Veterinary Licensing Examination.

“*Patient*” means an animal or group of animals examined or treated by a licensed veterinarian.

“*PAVE*” means the Program for the Assessment of Veterinary Education Equivalence.

“*Permit*” means a temporary educational permit or a temporary in-state practice permit issued by the board pursuant to rule 811—9.1(169).

“Permit holder” means a person holding a permit issued by the board.

“Physical examination” means a veterinarian is physically proximate, hands-on to the patient and subjectively and objectively evaluates the patient’s health status through the use of observation, auscultation, palpation, percussion or manipulations, or, for a group of patients, the veterinarian is physically proximate to the group of patients and has subjectively and objectively assessed a representative sample of the patients.

“Premises” means the land, buildings, enclosures, and facilities operated or owned by the client where the patient or representative patients are housed, kept, located, or grazed.

“Qualifying military service personnel” means a person, or the spouse of that person, who is currently or who has been during the past 12 months on federal active duty, state active duty, or national guard duty and has provided sufficient documentation to the board concerning the service and, if applicable, marriage.

“RACE” means the Registry of Approved Continuing Education, which is the national clearinghouse for approval of continuing education providers and their programs. All RACE-approved continuing education providers and programs are listed on the American Association of Veterinary State Boards website.

“Veterinarian” means the same as defined in Iowa Code section 169.3(11).

“VTNE” means the Veterinary Technician National Examination.

These rules are intended to implement Iowa Code section 17A.3 and chapter 169.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 811—Chapter 2
“Petitions for Rulemaking”

Iowa Code section(s) or chapter(s) authorizing rulemaking: 169.5
State or federal law(s) implemented by the rulemaking: Iowa Code chapter 169

Public Hearing

A public hearing at which persons may present their views orally or in writing will be held as follows:

November 13, 2023
10 a.m.

Second Floor Conference Room
Wallace State Office Building
Des Moines, Iowa

Public Comment

Any interested person may submit written comments concerning this Regulatory Analysis. Written comments in response to this Regulatory Analysis must be received by the Board of Veterinary Medicine no later than 4:30 p.m. on the date of the public hearing. Comments should be directed to:

Colin Tadlock
Iowa Department of Agriculture and Land Stewardship
Wallace State Office Building
502 East 9th Street
Des Moines, Iowa 50319
Email: colin.tadlock@iowaagriculture.gov

Purpose and Summary

Proposed Chapter 2 provides the public with information about how to petition the Board for rulemaking.

Analysis of Impact

1. Persons affected by the proposed rulemaking:

- Classes of persons that will bear the costs of the proposed rulemaking:

Only citizens or groups that seek to prepare and file a petition for rulemaking would bear any costs under this rulemaking, and those costs would be limited to the time/resources necessary to draft a petition for rulemaking.

- Classes of persons that will benefit from the proposed rulemaking:

The public and regulated community will benefit from the proposed rulemaking because it provides a specific process by which they can seek rulemaking from the Board.

2. Impact of the proposed rulemaking, economic or otherwise, including the nature and amount of all the different kinds of costs that would be incurred:

- Quantitative description of impact:

There is little, if any, quantitative impact from the proposed rulemaking because only citizens or groups that seek to prepare and file a petition for rulemaking would bear any costs, and those costs would be limited to the time/resources necessary to draft a petition for rulemaking.

- Qualitative description of impact:

There is little, if any, qualitative impact from the proposed rulemaking because only citizens or groups that seek to prepare and file a petition for rulemaking would bear any costs, and those costs would be limited to the time/resources necessary to draft a petition for rulemaking.

3. Costs to the State:

- Implementation and enforcement costs borne by the agency or any other agency:

The costs would be limited to time spent by the Board and staff reviewing petition(s) for rulemaking.

- Anticipated effect on state revenues:

The costs would be limited to time spent by the Board and staff reviewing petition(s) for rulemaking.

4. Comparison of the costs and benefits of the proposed rulemaking to the costs and benefits of inaction:

Failure to have a specific process for petitioning for rulemaking could lead to increased costs or burdens to the Board and State as more staff time will be required to answer questions from the public and regulated community about how to petition the Board for rulemaking, which may also increase the costs or time required by the public or licensees to properly prepare a petition for rulemaking.

5. Determination whether less costly methods or less intrusive methods exist for achieving the purpose of the proposed rulemaking:

There does not appear to be any less costly method because the process for petitioning the Board for rulemaking needs to be included in Chapter 2 to properly inform the public and regulated community about the process. In order to promote efficiency and reduce costs, the Board adopted by reference the Uniform Rules on Agency Procedure related to petition for rulemaking.

6. Alternative methods considered by the agency:

- Description of any alternative methods that were seriously considered by the agency:

No alternative methods were considered.

- Reasons why alternative methods were rejected in favor of the proposed rulemaking:

No alternative methods were considered.

Small Business Impact

If the rulemaking will have a substantial impact on small business, include a discussion of whether it would be feasible and practicable to do any of the following to reduce the impact of the rulemaking on small business:

- Establish less stringent compliance or reporting requirements in the rulemaking for small business.

- Establish less stringent schedules or deadlines in the rulemaking for compliance or reporting requirements for small business.

- Consolidate or simplify the rulemaking's compliance or reporting requirements for small business.

- Establish performance standards to replace design or operational standards in the rulemaking for small business.

- Exempt small business from any or all requirements of the rulemaking.

If legal and feasible, how does the rulemaking use a method discussed above to reduce the substantial impact on small business?

Only citizens or groups that seek to prepare and file a petition for rulemaking would bear any costs under this rulemaking, and there does not appear to be any additional impact on small business to prepare a petition for rulemaking.

Text of Proposed Rulemaking

ITEM 1. Rescind 811—Chapter 2 and adopt the following **new** chapter in lieu thereof:

CHAPTER 2

PETITIONS FOR RULEMAKING

The board of veterinary medicine hereby adopts, with the following exceptions and amendments, the Uniform Rules on Agency Procedure relating to petitions for rulemaking, which are published at www.legis.iowa.gov/DOCS/Rules/Current/UniformRules.pdf on the general assembly's website, with the addition of new rule 811—2.5(17A).

811—2.1(17A) Petition for rulemaking. In lieu of “(designate office)”, insert “Board of Veterinary Medicine at the Iowa Department of Agriculture and Land Stewardship, State Veterinarian, Wallace State Office Building, 502 E. 9th Street, Des Moines, Iowa 50319-0053”. In lieu of “(AGENCY NAME)”, insert “BOARD OF VETERINARY MEDICINE”.

811—2.3(17A) Inquiries. In lieu of “(designate official by full title and address)”, insert “the State Veterinarian, Iowa Department of Agriculture and Land Stewardship, Wallace State Office Building, 502 E. 9th Street, Des Moines, Iowa 50319-0053”.

811—2.5(17A) Petitions received by department. If, pursuant to rule 21—3.5(17A), the secretary of agriculture receives and forwards a petition for rulemaking that is not within the rulemaking power of the secretary but that is within the rulemaking power of the board, the petition will be accepted for action by the board.

These rules are intended to implement Iowa Code chapter 17A.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 811—Chapter 3
“Declaratory Orders”

Iowa Code section(s) or chapter(s) authorizing rulemaking: 169.5
State or federal law(s) implemented by the rulemaking: Iowa Code chapter 169

Public Hearing

A public hearing at which persons may present their views orally or in writing will be held as follows:

November 13, 2023
10 a.m.

Second Floor Conference Room
Wallace State Office Building
Des Moines, Iowa

Public Comment

Any interested person may submit written comments concerning this Regulatory Analysis. Written comments in response to this Regulatory Analysis must be received by the Board of Veterinary Medicine no later than 4:30 p.m. on the date of the public hearing. Comments should be directed to:

Colin Tadlock
Iowa Department of Agriculture and Land Stewardship
Wallace State Office Building
502 East 9th Street
Des Moines, Iowa 50319
Email: colin.tadlock@iowaagriculture.gov

Purpose and Summary

Proposed Chapter 3 provides the public with information about how to petition the Board for a declaratory order.

Analysis of Impact

1. Persons affected by the proposed rulemaking:

- Classes of persons that will bear the costs of the proposed rulemaking:

Only citizens or groups that seek to prepare and file a petition for a declaratory order would bear any costs under this rulemaking, and those costs would be limited to the time/resources necessary to draft a petition.

- Classes of persons that will benefit from the proposed rulemaking:

The public and regulated community will benefit from the proposed rulemaking because it provides a specific process by which they can seek a declaratory order from the Board.

2. Impact of the proposed rulemaking, economic or otherwise, including the nature and amount of all the different kinds of costs that would be incurred:

- Quantitative description of impact:

There is little, if any, quantitative impact from the proposed rulemaking because only citizens or groups that seek to prepare and file a petition for a declaratory order would bear any costs, and those costs would be limited to the time/resources necessary to draft a petition.

- Qualitative description of impact:

There is little, if any, qualitative impact from the proposed rulemaking because only citizens or groups that seek to prepare and file a petition for a declaratory order would bear any costs, and those costs would be limited to the time/resources necessary to draft a petition.

3. Costs to the State:

- Implementation and enforcement costs borne by the agency or any other agency:

The costs would be limited to time spent by the Board and staff reviewing petition(s) for declaratory order(s).

- Anticipated effect on state revenues:

There is no anticipated effect on state revenues.

4. Comparison of the costs and benefits of the proposed rulemaking to the costs and benefits of inaction:

Failure to have a specific process for petitioning for declaratory orders could lead to increased costs or burdens to the Board and State since more staff time would be required to answer questions from the public and regulated community about how to petition the Board for a declaratory order, which could also increase the costs or time required by the public or licensees to properly prepare a petition for declaratory orders.

5. Determination whether less costly methods or less intrusive methods exist for achieving the purpose of the proposed rulemaking:

There does not appear to be any less costly method because the process for petitioning the Board for declaratory orders needs to be included in Chapter 3 to properly inform the public and regulated community about the process. In order to promote efficiency and reduce costs, the Board adopted by reference the Uniform Rules on Agency Procedure related to petition for declaratory orders.

6. Alternative methods considered by the agency:

- Description of any alternative methods that were seriously considered by the agency:

No alternative methods were considered.

- Reasons why alternative methods were rejected in favor of the proposed rulemaking:

No alternative methods were considered.

Small Business Impact

If the rulemaking will have a substantial impact on small business, include a discussion of whether it would be feasible and practicable to do any of the following to reduce the impact of the rulemaking on small business:

- Establish less stringent compliance or reporting requirements in the rulemaking for small business.
- Establish less stringent schedules or deadlines in the rulemaking for compliance or reporting requirements for small business.
- Consolidate or simplify the rulemaking's compliance or reporting requirements for small business.
- Establish performance standards to replace design or operational standards in the rulemaking for small business.
- Exempt small business from any or all requirements of the rulemaking.

If legal and feasible, how does the rulemaking use a method discussed above to reduce the substantial impact on small business?

Only citizens or groups that seek to prepare and file a petition for declaratory order would bear any costs under this rulemaking, and there does not appear to be any additional impact on small business to prepare a petition for declaratory order.

Text of Proposed Rulemaking

ITEM 1. Rescind 811—Chapter 3 and adopt the following **new** chapter in lieu thereof:

CHAPTER 3
DECLARATORY ORDERS

The veterinary medicine board hereby adopts, with the following exceptions and amendments, the Uniform Rules on Agency Procedure relating to declaratory orders, which are published at www.legis.iowa.gov/DOCS/Rules/Current/UniformRules.pdf on the general assembly's website

811—3.1(17A,169,272C) Petition for declaratory order. In lieu of “(designate agency)”, insert “board of veterinary medicine (hereinafter referred to as “the board”)”. In lieu of “(designate agency)” the subsequent times the words are used, insert “board”. In lieu of “(designate office)”, insert “State Veterinarian’s Office, Wallace State Office Building, 502 E. 9th Street, Des Moines, Iowa 50319-0053”. In lieu of “(AGENCY NAME)”, insert “BOARD OF VETERINARY MEDICINE”.

811—3.2(17A,169,272C) Notice of petition. In lieu of “_____ days (15 or less)”, insert “15 days”. In lieu of “(designate agency)”, insert “board”.

811—3.3(17A,169,272C) Intervention.

3.3(1) In lieu of “_____ days”, insert “20 days”.

3.3(2) In lieu of “(designate agency)”, insert “the board”.

3.3(3) In lieu of “(designate office)”, insert “the state veterinarian’s office at the department of agriculture and land stewardship in the Wallace State Office Building”. In lieu of the words “(designate agency)”, insert “board”. In lieu of “(AGENCY NAME)”, insert “BOARD OF VETERINARY MEDICINE”.

Delete paragraph 6 and insert in lieu thereof the following:

“6. A statement that the intervenor consents to be bound by the determination of the matters presented in the declaratory order proceeding.”

811—3.4(17A,169,272C) Briefs. In lieu of “(designate agency)”, insert “board”.

811—3.5(17A,169,272C) Inquiries. In lieu of “(designate official by full title and address)”, insert “the State Veterinarian, Department of Agriculture and Land Stewardship, Wallace State Office Building, 502 E. 9th Street, Des Moines, Iowa 50319-0053”.

811—3.6(17A,169,272C) Service and filing of petitions and other papers.

3.6(2) In lieu of “(specify office and address)”, insert “the State Veterinarian, Department of Agriculture and Land Stewardship, Wallace State Office Building, 502 E. 9th Street, Des Moines, Iowa 50319-0053”. In lieu of the words “(agency name)”, insert “board”.

3.6(3) In lieu of the words “(uniform rule on contested cases X.12(17A))”, insert “rule 811—10.23(17A,169,272C)”.

811—3.7(17A,169,272C) Consideration. In lieu of “(designate agency)”, insert “board”.

811—3.8(17A,169,272C) Action on petition.

3.8(1) In lieu of “(designate agency head)”, insert “the chairperson of the board”.

3.8(2) In lieu of “(contested case uniform rule X.2(17A))”, insert “rule 811—10.14(17A,169,272C)”.

811—3.9(17A,169,272C) Refusal to issue order.

3.9(1) In lieu of “(designate agency)”, insert “board”.

811—3.12(17A,169,272C) Effect of a declaratory order. In lieu of “(designate agency)”, insert “board”. Delete the words “(who consent to be bound)”.

These rules are intended to implement Iowa Code chapters 17A, 169, and 272C.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 811—Chapter 4
“Agency Procedure for Rulemaking”

Iowa Code section(s) or chapter(s) authorizing rulemaking: 169.5
State or federal law(s) implemented by the rulemaking: Iowa Code chapter 169

Public Hearing

A public hearing at which persons may present their views orally or in writing will be held as follows:

November 13, 2023
10 a.m.

Second Floor Conference Room
Wallace State Office Building
Des Moines, Iowa

Public Comment

Any interested person may submit written comments concerning this Regulatory Analysis. Written comments in response to this Regulatory Analysis must be received by the Board of Veterinary Medicine no later than 4:30 p.m. on the date of the public hearing. Comments should be directed to:

Colin Tadlock
Iowa Department of Agriculture and Land Stewardship
Wallace State Office Building
502 East 9th Street
Des Moines, Iowa 50319
Email: colin.tadlock@iowaagriculture.gov

Purpose and Summary

Proposed Chapter 4 provides the public with information about the Board’s process for adopting rules.

Analysis of Impact

1. Persons affected by the proposed rulemaking:

- Classes of persons that will bear the costs of the proposed rulemaking:

Only citizens or groups that seek to participate in the rulemaking process will bear the costs, and those costs will be limited to the time/resources necessary to comment on proposed rules.

- Classes of persons that will benefit from the proposed rulemaking:

The public and regulated community will benefit from the proposed rulemaking because it provides a specific process by which they can participate in the Board’s rulemaking process.

2. Impact of the proposed rulemaking, economic or otherwise, including the nature and amount of all the different kinds of costs that would be incurred:

- Quantitative description of impact:

There is little, if any, quantitative impact from the proposed rulemaking because only citizens or groups that seek to participate in the rulemaking process would bear any costs, and those costs would be limited to the time/resources necessary to comment on proposed rules.

- Qualitative description of impact:

There is little, if any, qualitative impact from the proposed rulemaking because only citizens or groups that seek to participate in the rulemaking process would bear any costs, and those costs would be limited to the time/resources necessary to comment on proposed rules.

3. Costs to the State:

- Implementation and enforcement costs borne by the agency or any other agency:

The costs would be limited to time spent by the Board and staff preparing proposed rules and engaging in the rulemaking process.

- Anticipated effect on state revenues:

There is no anticipated effect on state revenues.

4. Comparison of the costs and benefits of the proposed rulemaking to the costs and benefits of inaction:

Failure to have a specific process for engaging in rulemaking could lead to increased costs or burdens to the Board and State because more staff time will be required to prepare proposed rules and engage in the rulemaking process, and inconsistency in the rulemaking process could jeopardize the validity of any rules that are promulgated.

5. Determination whether less costly methods or less intrusive methods exist for achieving the purpose of the proposed rulemaking:

There does not appear to be any less costly method because the rulemaking process needs to be included in Chapter 4 to properly inform the public and regulated community about how to participate in the process. In order to promote efficiency and reduce costs, the Board adopted by reference the Uniform Rules on Agency Procedure related to agency procedure for rulemaking.

6. Alternative methods considered by the agency:

- Description of any alternative methods that were seriously considered by the agency:

No alternative methods were considered.

- Reasons why alternative methods were rejected in favor of the proposed rulemaking:

No alternative methods were considered.

Small Business Impact

If the rulemaking will have a substantial impact on small business, include a discussion of whether it would be feasible and practicable to do any of the following to reduce the impact of the rulemaking on small business:

- Establish less stringent compliance or reporting requirements in the rulemaking for small business.

- Establish less stringent schedules or deadlines in the rulemaking for compliance or reporting requirements for small business.

- Consolidate or simplify the rulemaking's compliance or reporting requirements for small business.

- Establish performance standards to replace design or operational standards in the rulemaking for small business.

- Exempt small business from any or all requirements of the rulemaking.

If legal and feasible, how does the rulemaking use a method discussed above to reduce the substantial impact on small business?

Only citizens or groups that seek to participate in the rulemaking process would bear any costs under this rulemaking, and there does not appear to be any additional impact on small business to participate in the process.

Text of Proposed Rulemaking

ITEM 1. Rescind 811—Chapter 4 and adopt the following new chapter in lieu thereof:

CHAPTER 4

AGENCY PROCEDURE FOR RULEMAKING

The veterinary medicine board hereby adopts, with the following exceptions and amendments, the Uniform Rules on Agency Procedure relating to agency procedure for rulemaking, which are published at www.legis.iowa.gov/DOCS/Rules/Current/UniformRules.pdf on the general assembly's website.

811—4.1(17A,169,272C) Applicability. In lieu of “agency”, insert “the board of veterinary medicine (hereinafter referred to as “the board”)”.

811—4.3(17A,169,272C) Public rulemaking docket.

4.3(2) In lieu of “(commission, board, council, director)”, insert “board”.

811—4.4(17A,169,272C) Notice of proposed rulemaking.

4.4(3) In lieu of “(specify time period)”, insert “one year”.

811—4.5(17A,169,272C) Public participation.

4.5(1) In lieu of “(identify office and address)”, insert “the State Veterinarian, Department of Agriculture and Land Stewardship, Wallace State Office Building, 502 E. 9th Street, Des Moines, Iowa 50319-0053”.

4.5(5) In lieu of “(designate office and telephone number)”, insert “the state veterinarian office at 515.281.8617”.

811—4.6(17A,169,272C) Regulatory analysis.

4.6(2) In lieu of “(designate office)”, insert “state veterinarian’s office”.

811—4.10(17A,169,272C) Exemptions from public rulemaking procedures.

4.10(2) This subrule is not adopted.

811—4.11(17A,169,272C) Concise statement of reasons.

4.11(1) In lieu of “(specify the office and address)”, insert “the State Veterinarian, Department of Agriculture and Land Stewardship, Wallace State Office Building, 502 E. 9th Street, Des Moines, Iowa 50319-0053”.

811—4.13(17A,169,272C) Agency rulemaking record.

4.13(2) In lieu of “(agency head)”, insert “chairperson of the board”.

These rules are intended to implement Iowa Code chapters 17A, 169, and 272C.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 811—Chapter 5
“Public Records and Fair Information Practices”

Iowa Code section(s) or chapter(s) authorizing rulemaking: 169.5
State or federal law(s) implemented by the rulemaking: Iowa Code chapter 169

Public Hearing

A public hearing at which persons may present their views orally or in writing will be held as follows:

November 13, 2023
10 a.m.

Second Floor Conference Room
Wallace State Office Building
Des Moines, Iowa

Public Comment

Any interested person may submit written comments concerning this Regulatory Analysis. Written comments in response to this Regulatory Analysis must be received by the Board of Veterinary Medicine no later than 4:30 p.m. on the date of the public hearing. Comments should be directed to:

Colin Tadlock
Iowa Department of Agriculture and Land Stewardship
Wallace State Office Building
502 East 9th Street
Des Moines, Iowa 50319
Email: colin.tadlock@iowaagriculture.gov

Purpose and Summary

Proposed Chapter 5 provides the public with information about how the Board handles both public and confidential records, as well as requests for such records.

Analysis of Impact

1. Persons affected by the proposed rulemaking:

- Classes of persons that will bear the costs of the proposed rulemaking:

Only citizens or groups that request public records would bear any costs under this rulemaking, and those costs would only be imposed if the search or review exceeds 30 minutes.

- Classes of persons that will benefit from the proposed rulemaking:

The public and regulated community will benefit from the proposed rulemaking because it explains the process and requirements for making a public records request with the Board.

2. Impact of the proposed rulemaking, economic or otherwise, including the nature and amount of all the different kinds of costs that would be incurred:

- Quantitative description of impact:

The costs are the fees imposed to review and copy public records, but only if the search or review exceeds 30 minutes. The fees vary depending upon the size and scope of the public records request. However, Board staff members try to give an estimate of any such costs prior to conducting the actual records review to give the requestor an opportunity to expand/narrow the search depending upon costs.

- Qualitative description of impact:

The only qualitative impact is that it will take staff time to process requests.

3. Costs to the State:

- Implementation and enforcement costs borne by the agency or any other agency:

The costs would be limited to time spent by the Board and staff in responding to and supervising or reviewing public records responsive to the request, but the Board charges copying and supervisory fees to cover some of the costs of responding to a public records request, mitigating the actual costs to the State. However, for requests that do not exceed 30 minutes to search and/or review, the costs to the State are not covered by any fees as fees are not assessed.

- Anticipated effect on state revenues:

There are likely minimal effects on state revenues since some of the costs to the State are covered by the fees assessed for public records requests that exceed 30 minutes to search and/or review, and the requests that do not exceed 30 minutes have a minimal impact on Board staff or resources.

4. Comparison of the costs and benefits of the proposed rulemaking to the costs and benefits of inaction:

Failure to have a specific process for making a public records request, including what, if any, costs are associated with a response and what records are public versus confidential, could lead to increased costs or burdens to the Board and State because more staff time will be required to answer questions from the public and regulated community about the process or costs, which may also increase the costs or time required by the public or licensees to properly prepare a public records request.

5. Determination whether less costly methods or less intrusive methods exist for achieving the purpose of the proposed rulemaking:

There does not appear to be any less costly method because the process and costs for making a public records request need to be included in Chapter 5 to properly inform the public and regulated community about the process and costs. In order to promote efficiency and reduce costs, the Board adopted by reference the Uniform Rules on Agency Procedure related to public records and fair information practices.

6. Alternative methods considered by the agency:

- Description of any alternative methods that were seriously considered by the agency:

No alternative methods were considered.

- Reasons why alternative methods were rejected in favor of the proposed rulemaking:

No alternative methods were considered.

Small Business Impact

If the rulemaking will have a substantial impact on small business, include a discussion of whether it would be feasible and practicable to do any of the following to reduce the impact of the rulemaking on small business:

- Establish less stringent compliance or reporting requirements in the rulemaking for small business.
- Establish less stringent schedules or deadlines in the rulemaking for compliance or reporting requirements for small business.
- Consolidate or simplify the rulemaking's compliance or reporting requirements for small business.
- Establish performance standards to replace design or operational standards in the rulemaking for small business.
- Exempt small business from any or all requirements of the rulemaking.

If legal and feasible, how does the rulemaking use a method discussed above to reduce the substantial impact on small business?

Only citizens or groups that make a public records request would bear any costs under this rulemaking, and there does not appear to be any additional impact on small business to prepare a public records request.

Text of Proposed Rulemaking

ITEM 1. Rescind 811—Chapter 5 and adopt the following new chapter in lieu thereof:

CHAPTER 5
PUBLIC RECORDS AND FAIR INFORMATION PRACTICES

The board of veterinary medicine hereby adopts, with the following exceptions and amendments, the Uniform Rules on Agency Procedure relating to fair information practices, which are published at www.legis.iowa.gov/DOCS/Rules/Current/UniformRules.pdf on the general assembly's website, with the addition of new rules 811—5.9(17A,22) through 811—5.16(17A,22).

811—5.1(17A,22) Definitions. In lieu of “(official or body issuing these rules)”, insert “board of veterinary medicine”.

811—5.3(17A,22) Requests for access to records.

5.3(1) Location of record. In lieu of “(insert agency head)”, insert “state veterinarian as secretary of the board of veterinary medicine”. In lieu of “(insert agency name and address)”, insert “Board of Veterinary Medicine, State Veterinarian, Department of Agriculture and Land Stewardship, Wallace State Office Building, 502 E. 9th Street, Des Moines, Iowa 50319-0053”.

5.3(2) Office hours. In lieu of the parenthetical statement, insert “8 a.m. to 4:30 p.m., Monday through Friday, except legal holidays”.

5.3(7) Fees.

a. When charged. To the extent permitted by applicable provisions of law, the payment of fees may be waived when the imposition of fees is inequitable or when a waiver is in the public interest.

c. Supervisory fee. In lieu of “(specify time period)”, insert “one-half hour”.

811—5.6(17A,22) Procedure by which additions, dissents, or objections may be entered into certain records. In lieu of “(designate office)”, insert “the board of veterinary medicine”.

811—5.9(17A,22) Disclosures without the consent of the subject.

5.9(1) Open records are routinely disclosed without the consent of the subject.

5.9(2) To the extent allowed by law, disclosure of confidential records may occur without the consent of the subject. Following are instances where disclosure, if lawful, will generally occur without notice to the subject:

a. For a routine use as defined in rule 811—5.10(17A,22) or in any notice for a particular record system.

b. To a recipient who has provided the agency with advance written assurance that the record will be used solely as a statistical research or reporting record, provided that the record is transferred in a form that does not identify the subject.

c. To another government agency or to an instrumentality of any governmental jurisdiction within or under the control of the United States for a civil or criminal law enforcement activity if the activity is authorized by law, and if an authorized representative of such government agency or instrumentality has submitted a written request to the agency specifying the record desired and the law enforcement activity for which the record is sought.

d. To an individual pursuant to a showing of compelling circumstances affecting the health or safety of any individual if a notice of the disclosure is transmitted to the last known address of the subject.

e. To the legislative services agency under Iowa Code section 2A.3.

f. Disclosures in the course of employee disciplinary proceedings.

- g. In response to a court order or subpoena.

811—5.10(17A,22) Routine use.

5.10(1) “Routine use” means the disclosure of a record without the consent of the subject or subjects, for a purpose that is compatible with the purpose for which the record was collected. It includes disclosures required to be made by statute other than the public records law, Iowa Code chapter 22.

5.10(2) To the extent allowed by law, the following uses are considered routine uses of all agency records:

- a. Disclosure to those officers, employees, and agents of the agency who have a need for the record in the performance of their duties. The custodian of the record may, upon request of any officer or employee, or on the custodian’s own initiative, determine what constitutes legitimate need to use confidential records.
- b. Disclosure of information indicating an apparent violation of the law to appropriate law enforcement authorities for investigation and possible criminal prosecution, civil court action, or regulatory order.
- c. Disclosure to the department of inspections and appeals for matters in which it is performing services or functions on behalf of the agency.
- d. Transfers of information within the agency, to other state agencies, or to local units of government as appropriate to administer the program for which the information is collected.
- e. Information released to staff of federal and state entities for audit purposes or for purposes of determining whether the agency is operating a program lawfully.
- f. Any disclosure specifically authorized by the statute under which the record was collected or maintained.

811—5.11(17A,22) Consensual disclosure of confidential records.

5.11(1) *Consent to disclosure by a subject individual.* To the extent permitted by law, the subject may consent in writing to agency disclosure of confidential records as provided in rule 811—5.7(17A,22).

5.11(2) *Complaints to public officials.* A letter from a subject of a confidential record to a public official that seeks the official’s intervention on behalf of the subject in a matter that involves the agency may, to the extent permitted by law, be treated as an authorization to release sufficient information about the subject to the official to resolve the matter.

811—5.12(17A,22) Release to subject.

5.12(1) A written request to review confidential records may be filed by the subject of the record as provided in rule 811—5.6(17A,22). The agency need not release the following records to the subject:

- a. The identity of a person providing information to the agency need not be disclosed directly or indirectly to the subject of the information when the information is authorized to be held confidential pursuant to Iowa Code section 22.7(18) or other provision of law.
- b. Records need not be disclosed to the subject when they are the work product of an attorney or are otherwise privileged.
- c. Peace officers’ investigative reports may be withheld from the subject, except as required by Iowa Code section 22.7(5).
- d. Any others authorized by law.

5.12(2) Where a record has multiple subjects with interest in the confidentiality of the record, the agency may take reasonable steps to protect confidential information relating to another subject.

811—5.13(17A,22) Availability of records.

5.13(1) *Open records.* Agency records are open for public inspection and copying unless otherwise provided by rule or law.

5.13(2) *Confidential records.* The following records may be withheld from public inspection. Records are listed by category, according to the legal basis for withholding them from public inspection:

- a. Sealed bids received prior to the time set for public opening of bids. (Iowa Code section 72.3)

- b. Tax records made available to the agency. (Iowa Code sections 422.20 and 422.72)
- c. Records that are exempt from disclosure under Iowa Code section 22.7.
- d. Minutes of closed meetings of a government body. (Iowa Code section 21.5(4))
- e. Identifying details in final orders, decisions and opinions to the extent required to prevent a clearly unwarranted invasion of personal privacy or trade secrets under Iowa Code section 17A.3(1) “d.”
- f. Those portions of agency staff manuals, instructions or other statements issued that set forth criteria or guidelines to be used by agency staff in circumstances authorized by Iowa Code sections 17A.2 and 17A.3.
- g. Records that constitute attorney work product, constitute attorney-client communications, or are otherwise privileged. Attorney work product is confidential under Iowa Code sections 22.7(4), 622.10 and 622.11, Iowa R.C.P. 122(c), Fed. R. Civ. P. 26(b)(3), and case law. Attorney-client communications are confidential under Iowa Code sections 622.10 and 622.11, the rules of evidence, the Code of Professional Responsibility, and case law.
- h. Any other records considered confidential by law.

5.13(3) Authority to release confidential records. The agency may have discretion to disclose some confidential records that are exempt from disclosure under Iowa Code section 22.7 or other law. Any person may request permission to inspect records withheld from inspection under a statute that authorizes limited or discretionary disclosure as provided in rule 811—5.4(17A,22). If the agency initially determines that it will release such records, the agency may, where appropriate, notify interested parties and withhold the records from inspection as provided in subrule 5.4(3).

811—5.14(17A,22) Personally identifiable information. The agency maintains systems of records that contain personally identifiable information. Unless otherwise stated, the authority for this agency to maintain the record is provided by Iowa Code chapter 169. The record systems maintained by the agency are:

5.14(1) Personnel files. Employees of the agency are employed through the department of agriculture and land stewardship. Through the department of agriculture and land stewardship, the agency maintains files containing information about employees, families and dependents, and applicants for positions with the agency. The files include payroll records, biographical information, medical information relating to disability, performance reviews and evaluations, disciplinary information, information required for tax withholding, information concerning employee benefits, affirmative action reports, and other information concerning the employer-employee relationship. Some of this information is confidential under Iowa Code section 22.7(11).

5.14(2) Litigation files. These files or records contain information regarding litigation or anticipated litigation, which include judicial and administrative proceedings. The records include briefs, depositions, docket sheets, documents, correspondence, attorneys’ notes, memoranda, research materials, witness information, investigation materials, information compiled under the direction of the attorney, and case management records. The files contain materials that are confidential as attorney work product and attorney-client communications. Some materials are confidential under other applicable provisions of law or because of a court order. Persons seeking copies of pleadings and other documents filed in litigation should obtain these from the clerk of the appropriate court that maintains the official copy.

5.14(3) Contested case matters. These records are collected and maintained pursuant to Iowa Code sections 17A.3(1) “d,” 17A.3(2), and 17A.12, and the Iowa Code sections noted in subrule 5.14(4). Contested case matters include all pleadings, motions, briefs, orders, transcripts, exhibits, and physical evidence utilized in the resolution of the matter, and may, unless released by the credential holder, be confidential as stated in subrule 5.14(4). These records are primarily maintained in paper copy, with some material generated or maintained in a data processing system.

5.14(4) Credential records. Under Iowa Code chapter 169, the board regulates by license veterinarians, and regulates by certificate veterinary technicians, assistants and veterinary students, and regulates by temporary permit veterinarians credentialed under Iowa Code section 169.11 and rule 811—9.1(169). Credential records include, but are not limited to, information identifying the credential holder by name or code, location, and form of business entity, including the names of

corporate principals. These records may include examinations, complaints, compliance activities and investigatory reports that are confidential. These records may include confidential information protected from disclosure under Iowa Code sections 22.7, 169.6 and 272.6. These records are maintained jointly with the department of agriculture and land stewardship. These records are primarily maintained in paper copy, with some material generated or maintained in a data processing system.

5.14(5) *Laboratory reports.* In furtherance of licensure and certification regulation under subrule 5.14(4), the board may procure laboratory reports consisting of analytical results of samples. These records may include confidential information protected from disclosure under Iowa Code section 22.7(3), 22.7(6), or 22.7(18), as well as those provisions stated in subrule 5.14(4). These records are primarily maintained in paper copy, with some material generated or maintained in a data processing system. These records are identified by the name or code of the subject of the investigation.

811—5.15(17A,22) Other groups of records. Other groups of records are maintained by the agency other than the records defined in rule 811—5.1(17A,22). These records are routinely available to the public. However, the agency's files of these records may contain confidential information as discussed in rule 811—5.13(17A,22). The records listed may contain information about individuals.

5.15(1) *Administrative records.* This includes documents concerning budget, property inventory, purchasing, yearly reports, office policies for employees, time sheets, printing and supply requisitions.

5.15(2) *Publications.* The office receives a number of books, periodicals, newsletters, government documents, etc. These materials would generally be open to the public but may be protected by copyright law. Most publications of general interest are available in the state law library.

5.15(3) *Rulemaking records.* Rulemaking records may contain information about individuals making written or oral comments on proposed rules. This information is collected pursuant to Iowa Code section 17A.4. This information is available for public inspection.

5.15(4) *Board records.* Agendas, minutes, and materials prepared or maintained by the board are available from the office, except those records concerning closed sessions that are exempt from disclosure under Iowa Code section 21.5 or that are otherwise confidential by law. Board records contain information about people who participate in meetings. This information is collected pursuant to Iowa Code section 21.3. This information is not stored on an automated data processing system.

5.15(5) *Other records.* All other records that are not exempted from disclosure by law.

811—5.16(17A,22) Data processing systems. None of the data processing systems used by the agency permit the comparison of personally identifiable information in one record system with personally identifiable information in another record system.

811—5.17(169,252J,272D) Release of confidential licensing information for collection purposes. Notwithstanding any statutory confidentiality provision, the board may share information with the child support recovery unit or with the centralized collection unit of the department of revenue through manual or automated means for the sole purpose of identifying applicants or credential holders subject to enforcement under Iowa Code chapter 252J, 598 or 272D.

These rules are intended to implement Iowa Code chapters 17A, 22, 169 and 252J.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 811—Chapter 6
“Application for Veterinary Licensure”

Iowa Code section(s) or chapter(s) authorizing rulemaking: 169.5
State or federal law(s) implemented by the rulemaking: Iowa Code chapter 169

Public Hearing

A public hearing at which persons may present their views orally or in writing will be held as follows:

November 13, 2023
10 a.m.

Second Floor Conference Room
Wallace State Office Building
Des Moines, Iowa

Public Comment

Any interested person may submit written comments concerning this Regulatory Analysis. Written comments in response to this Regulatory Analysis must be received by the Board of Veterinary Medicine no later than 4:30 p.m. on the date of the public hearing. Comments should be directed to:

Colin Tadlock
Iowa Department of Agriculture and Land Stewardship
Wallace State Office Building
502 East 9th Street
Des Moines, Iowa 50319
Email: colin.tadlock@iowaagriculture.gov

Purpose and Summary

Proposed Chapter 6 provides for the process and requirements to obtain a license to practice veterinary medicine in Iowa. The chapter includes but is not limited to the application procedure, the requirements for license, the fees, and definitions of specific license types. The benefit to the public is a standardized process to ensure that the Board is granting licenses to qualified veterinarians. The benefit to veterinarians is a clear understanding of the process to become a licensed veterinarian in Iowa.

Analysis of Impact

1. Persons affected by the proposed rulemaking:
 - Classes of persons that will bear the costs of the proposed rulemaking:
Veterinarians seeking licensure in Iowa will bear the costs.
 - Classes of persons that will benefit from the proposed rulemaking:
Citizens of Iowa who need to seek the services of veterinarians will benefit. Because veterinarians are an integral part of food safety, the public can be assured that livestock are raised, treated and harvested in a humane way. Veterinarians would also benefit from this proposed rulemaking.
2. Impact of the proposed rulemaking, economic or otherwise, including the nature and amount of all the different kinds of costs that would be incurred:
 - Quantitative description of impact:
Costs associated with this rulemaking are the licensing fees and associated costs to obtain a veterinary license in Iowa. These costs are borne by the veterinarians seeking an Iowa license.
 - Qualitative description of impact:

The rulemaking requires certain education, examination, and/or certification requirements be met before obtaining a license to practice veterinary medicine.

3. Costs to the State:

- Implementation and enforcement costs borne by the agency or any other agency:

Costs incurred to execute and enforce Chapter 6 are borne by the Iowa Department of Agriculture and Land Stewardship and the Board. The major cost is staff time. Staff and estimated percentage of time allocated is as follows: Executive Secretary of the Iowa Board of Veterinary Medicine (State Veterinarian), 0.15 full-time equivalent (FTE) position; Program Planner 2, 0.60 FTE position; and two Compliance Investigators, 0.40 FTE position each (one Compliance Investigator, 0.80 FTE position). Other costs associated would include but are not limited to hiring expert witnesses, costs associated with hearings, legal staff, and office supplies.

- Anticipated effect on state revenues:

The anticipated effect on state revenues is minimal. The license application process requires applicants to pay a fee to mitigate some of the costs to the State to review and approve license applications.

4. Comparison of the costs and benefits of the proposed rulemaking to the costs and benefits of inaction:

Inaction or not licensing veterinarians would have a huge negative impact in Iowa on the quality of veterinarians practicing and would have negative effects on pets and livestock.

5. Determination whether less costly methods or less intrusive methods exist for achieving the purpose of the proposed rulemaking:

There is not an alternative method because the license requirements for veterinarians are specified in Iowa Code chapter 169.

6. Alternative methods considered by the agency:

- Description of any alternative methods that were seriously considered by the agency:

No alternative methods were considered.

- Reasons why alternative methods were rejected in favor of the proposed rulemaking:

No alternative methods were considered.

Small Business Impact

If the rulemaking will have a substantial impact on small business, include a discussion of whether it would be feasible and practicable to do any of the following to reduce the impact of the rulemaking on small business:

- Establish less stringent compliance or reporting requirements in the rulemaking for small business.

- Establish less stringent schedules or deadlines in the rulemaking for compliance or reporting requirements for small business.

- Consolidate or simplify the rulemaking's compliance or reporting requirements for small business.

- Establish performance standards to replace design or operational standards in the rulemaking for small business.

- Exempt small business from any or all requirements of the rulemaking.

If legal and feasible, how does the rulemaking use a method discussed above to reduce the substantial impact on small business?

This rulemaking does not impose requirements on any businesses, but only imposes licensure requirements on persons wishing to practice veterinary medicine in Iowa. Accordingly, there does not appear to be any impacts on small business.

Text of Proposed Rulemaking

ITEM 1. Rescind 811—Chapter 6 and adopt the following new chapter in lieu thereof:

CHAPTER 6
APPLICATION FOR VETERINARY LICENSURE

811—6.1(169) Procedure.

6.1(1) *Application to take examination.* Any person desiring to take the NAVLE in Iowa for a license to practice veterinary medicine applies to the board in accordance with the guidelines and timelines established by the ICVA. The applicant will submit proof of completing the application process with ICVA along with the administrative fee by sending the proof and fee to:

Iowa Board of Veterinary Medicine
Iowa Department of Agriculture and Land Stewardship
Wallace State Office Building
502 E. 9th Street
Des Moines, Iowa 50319-0053

Proof of NAVLE application is to be submitted on forms provided by the board in accordance with the guidelines and timelines established by the ICVA. The completed form is to be notarized and includes one current passport size and quality photograph of the applicant. Incomplete applications will be returned to the applicant along with the tendered fee and a written statement setting forth the reasons for such rejections.

A completed form is to be accompanied by satisfactory evidence of the applicant having graduated from an AVMA-accredited school of veterinary medicine or satisfactory evidence that the applicant is expected to graduate within six months of the date of the examination.

Applications to take the NAVLE will not be accepted from any person who has previously taken and passed that examination in any jurisdiction, except on case-by-case petition to the board for good cause shown or other order of the board.

6.1(2) *License requirements.* Prior to the board's issuance of a license, the applicant will:

- a. Successfully complete the NAVLE as provided in rule 811—7.1(169);
- b. Remit the proper application fee for licensure;
- c. Graduate from:
 - (1) An AVMA-accredited school of veterinary medicine; or
 - (2) An AVMA-listed school of veterinary medicine and have received a certificate from either ECFVG or PAVE;
- d. Provide a statement indicating all jurisdictions in which the applicant is or has ever been licensed to practice veterinary medicine and consent to release to the board license information from jurisdictions in which the applicant is or has ever been licensed;
- e. Provide information or consent to the release of information pertinent to the character and education of the applicant as the board may deem necessary in order to evaluate the applicant's qualifications; and
- f. Submit evidence of having completed at least 60 hours of approved continuing education within the last three licensing years. New graduates and applicants within one year after the date of graduation are exempt from continuing education requirements for initial licensing. Applicants who apply more than one year but less than two years after the date of graduation need to complete at least 20 hours of approved continuing education. Applicants who apply more than two years but less than three years after the date of graduation need to complete at least 40 hours of approved continuing education. As used in this paragraph, "date of graduation" also includes the date of PAVE or ECFVG certification.

A license issued during a triennium, upon the applicant's completion of these requirements and payment of the prorated triennial license fee, is issued for the balance of the triennium. A license expires on June 30 of the third year of the triennium.

811—6.2(169) Fee schedule for veterinarians. The following fees are collected by the board and will not be refunded except by board action in unusual instances such as documented illness of the applicant, death of the applicant, inability of the applicant to comply with the rules of the board, or withdrawal of an examination application provided withdrawal is received in writing 45 days prior to the examination date. However, the state fees may be waived for qualifying military service personnel upon request. Examination fees are not transferable from one examination to another.

The fee for the NAVLE, which is utilized by the board as a part of the licensure process, is the fee charged that year by ICVA, plus an administrative fee payable to the board.

Based on the board's anticipated financial requirements, the following fees are hereby adopted:

License—application fee	\$50
NAVLE examination fee	set by ICVA
Board administrative fee for NAVLE.	\$25
Triennial license	\$60
Late renewal penalty	\$100
License by endorsement—application fee	\$50
License by verification—application fee	\$50
Reactivation fee for lapsed or inactive license	\$100
Reinstatement fee	\$100
Duplicate license.	\$15
Temporary permit	\$35
Temporary permit application fee	\$15
Official licensure verification	\$15
Charge for insufficient funds or returned checks	\$25

This rule is intended to implement Iowa Code sections 169.5 and 169.12.

811—6.3(169) Reactivation fee. All applications for reactivation of a lapsed or inactive license to practice veterinary medicine are filed with the secretary of the board, together with the then current license fee, the current reactivation fee, and all applicable penalties for a lapsed or inactive license.

811—6.4(169) Graduates of foreign schools. Graduates of foreign veterinary schools may become eligible for examination and licensure by either of the following methods:

6.4(1) Examination eligibility through ECFVG. Graduates of foreign veterinary schools that, pursuant to the AVMA criteria, are not AVMA-accredited but are AVMA-listed may make application to take the NAVLE in this state provided that the application includes a copy of the applicant's diploma or certificate indicating the award of a degree in veterinary medicine from an AVMA-listed college and a letter from the ECFVG verifying that the applicant is or will be participating in an ECFVG certification program.

6.4(2) Licensure eligibility through ECFVG. Graduates of foreign veterinary schools that are not AVMA-accredited but are AVMA-listed will not be considered for licensing until they have received the certificate granted by the ECFVG. A license will not be issued to an applicant until the applicant submits a certified copy of the applicant's ECFVG certificate.

6.4(3) Examination eligibility through PAVE. Graduates of foreign veterinary schools may make application to take the NAVLE in this state provided that the application includes a certified copy of the applicant's diploma or certificate indicating the award of a degree in veterinary medicine from a foreign veterinary school and a letter from the AAVSB on behalf of PAVE verifying that the applicant

is participating in the PAVE certification program administered by the AAVSB, and has met the requirements for taking the NAVLE.

6.4(4) *Licensure eligibility through PAVE.* Graduates of foreign veterinary schools will not be considered for licensing until they have received the certificate granted by PAVE. A license will not be issued to an applicant until the applicant submits a copy of the applicant's PAVE certificate.

811—6.5(169) License by endorsement.

6.5(1) A license by endorsement may be granted by the board pursuant to either Iowa Code section 169.10(1) or 169.10(2). An applicant may apply for a license by endorsement on a form provided by the board and pay the application fee and triennial license fee. In addition to the information specified in Iowa Code section 169.10, the applicant will supply the items referenced in paragraphs 6.1(2) "d" through "f."

6.5(2) For an applicant with a non-Iowa license seeking licensure under Iowa Code section 169.10(1), the following applies:

- a. If the applicant's non-Iowa license was issued between December 31, 1964, and December 31, 1979, the applicant successfully completed the National Board Examination (NBE).
- b. If the applicant's non-Iowa license was issued between January 1, 1980, and December 31, 2000, the applicant successfully completed the NBE and the Clinical Competency Test (CCT).
- c. If the applicant's non-Iowa license was issued on or after January 1, 2001, the applicant successfully completed the NAVLE in accordance with rule 811—7.1(169).

6.5(3) An applicant who is a diplomate under Iowa Code section 169.10(2) will also include a copy of the applicant's board or college specialty certificate. For the purpose of this rule, a specialty board or college means a specialty board or college that has been officially recognized by the AVMA. Changes of specialty status shall be reported to the board within 30 days of the action.

811—6.6(272C) Licensure by verification. Licensure by verification is available in accordance with the following:

6.6(1) *Eligibility.* A person may seek licensure by verification if the person is licensed in at least one other jurisdiction.

6.6(2) *Board application.* The applicant will submit the following:

- a. A completed application for licensure by verification.
- b. Payment of the application fee.
- c. A verification form, completed by the licensing authority in the jurisdiction that issued the applicant's license, verifying that the applicant's license in that jurisdiction complies with the requirements of Iowa Code section 272C.12. The completed verification form is sent directly from the licensing authority to the board. This form is available on the board's website.
- d. A copy of the relevant disciplinary documents if another jurisdiction has taken disciplinary action against the applicant.

6.6(3) *Applicants with prior discipline or pending licensing complaints or investigations.* If another jurisdiction has taken disciplinary action against an applicant or if the applicant has a complaint, allegation, or investigation relating to unprofessional conduct pending before any regulating entity in another jurisdiction, the board will proceed according to Iowa Code section 272C.12(1) "f."

811—6.7(169) Issuance of limited license; specialization.

6.7(1) The board may grant a license to practice veterinary medicine within a limited and specified scope:

- a. As an option for board discipline under 811—Chapter 10.
- b. To a qualified member of the faculty of the Iowa State University College of Veterinary Medicine.
- c. To an applicant requesting limited or specialized status.

6.7(2) A licensed veterinarian will not claim or imply specialization unless the veterinarian is a diplomate in good standing of the respective specialty board or college recognized by the AVMA.

6.7(3) Veterinary student certificate. The board may issue a veterinary student certificate to a senior veterinary student who is attending an AVMA-accredited college of veterinary medicine, upon endorsement by the college that the student is competent to perform veterinary duties. The certificate issued by the board limits the student to performing duties under the direction of an instructor of veterinary medicine or under the direct supervision of a licensed veterinarian. Veterinary student certificate holders are barred from administering rabies vaccine to dogs as described in Iowa Code section 351.35 and signing a certificate of veterinary inspection as described in Iowa Code section 163.12.

6.7(4) Limited licensure for faculty. Faculty, not including residents or interns, at Iowa State University College of Veterinary Medicine may be issued a limited license to practice veterinary medicine. The applicant for a limited license for faculty has graduated from an AVMA-accredited or AVMA-listed school of veterinary medicine or has received a PAVE or ECFVG certificate and submitted a completed application and the necessary fees. Holders of limited licenses for faculty are limited to duties performed on the college premises during periods of employment at the college.

811—6.8(169) License renewal.

6.8(1) A license to practice veterinary medicine is issued for a three-year period, except that new licenses issued during a triennium are issued for the balance of that triennium, except that new certificates issued during a triennium are issued for the balance of the triennium. A license expires on June 30 of the third year of the triennium.

6.8(2) At least two months before the end of a triennium, a renewal notice will be sent to each licensee at the last address in the board's file. Failure to receive the notice does not relieve the licensee of the obligation to pay triennium renewal fees on or before June 30.

6.8(3) The license renewal application will include a statement that certifies the jurisdictions in which the licensee is currently or has in the past been licensed to practice veterinary medicine.

6.8(4) Renewal fees shall be received by the board on or before the end of the triennium on June 30. Whenever renewal fees are not received as specified, the license lapses and the practice of veterinary medicine ceases until all renewal fees and penalty fees are received by the board.

6.8(5) If the renewal fee has not been received by the board before the license has lapsed, an application for renewal filed with the board needs to include a renewal fee in addition to the reactivation fee and the late renewal penalty fee.

811—6.9(169) Renewal, lapsed or inactive license. A veterinarian whose license has lapsed may renew an expired license in circumstances authorized by Iowa Code section 169.12(2). A veterinarian whose license has lapsed or has been placed on inactive status, prior to receiving active status licensure in the practice of veterinary medicine in the state of Iowa, satisfies the requirements in either subrule 6.9(1) or subrule 6.9(2) for renewal of a lapsed or inactive license as follows:

6.9(1) *Renewal of a lapsed or inactive license.* An applicant for renewal of a lapsed or inactive license needs to do the following:

a. Submit written application for renewal of a lapsed or inactive license to the board upon forms provided by the board;

b. Furnish evidence of compliance with continuing education requirements specified in rule 811—11.3(169).

6.9(2) *Renewal by endorsement.* An applicant for renewal by endorsement may submit an application for renewal by endorsement by following the procedures set out in rule 811—6.5(169).

These rules are intended to implement Iowa Code chapters 17A and 169.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 811— Chapter 7
“Veterinary Examinations”

Iowa Code section(s) or chapter(s) authorizing rulemaking: 169.5
State or federal law(s) implemented by the rulemaking: Iowa Code chapter 169

Public Hearing

A public hearing at which persons may present their views orally or in writing will be held as follows:

November 13, 2023
10 a.m.

Second Floor Conference Room
Wallace State Office Building
Des Moines, Iowa

Public Comment

Any interested person may submit written comments concerning this Regulatory Analysis. Written comments in response to this Regulatory Analysis must be received by the Board of Veterinary Medicine no later than 4:30 p.m. on the date of the public hearing. Comments should be directed to:

Colin Tadlock
Iowa Department of Agriculture and Land Stewardship
Wallace State Office Building
502 East 9th Street
Des Moines, Iowa 50319
Email: colin.tadlock@iowaagriculture.gov

Purpose and Summary

This proposed chapter defines the veterinary examination process that includes the examination procedure and the conduct expected during the examination. The examination is generally required in order to obtain a license to practice veterinary medicine in Iowa. A definition of “ICVA” in rule 811—7.1(169) refers to the term as proposed in the Regulatory Analysis for 811—Chapter 1 (IAB 10/18/23).

Analysis of Impact

1. Persons affected by the proposed rulemaking:
 - Classes of persons that will bear the costs of the proposed rulemaking:
Veterinarians seeking licensure in Iowa will bear the costs of the proposed rulemaking.
 - Classes of persons that will benefit from the proposed rulemaking:
Citizens of Iowa that seek the services of veterinarians will benefit from the proposed rulemaking.
2. Impact of the proposed rulemaking, economic or otherwise, including the nature and amount of all the different kinds of costs that would be incurred:
 - Quantitative description of impact:
There are no direct costs to the public imposed by these proposed rules.
 - Qualitative description of impact:
There are no qualitative impacts relative to these proposed rules since the rulemaking simply explains the examination procedure and rules.
3. Costs to the State:

- Implementation and enforcement costs borne by the agency or any other agency:
There are no costs to the State. The Board has outsourced the development, assessment and proctoring of the exam.
 - Anticipated effect on state revenues:
There is no anticipated effect on state revenues.
4. Comparison of the costs and benefits of the proposed rulemaking to the costs and benefits of inaction:
Costs of inaction (lack of requirement of a passing score on an examination) would have a huge negative impact in Iowa on the quality of veterinarians practicing and on pets and livestock.
5. Determination whether less costly methods or less intrusive methods exist for achieving the purpose of the proposed rulemaking:
Currently, there is no less costly method. The Board has outsourced the development, assessment and proctoring of the exam.
6. Alternative methods considered by the agency:
- Description of any alternative methods that were seriously considered by the agency:
There were no alternative methods that were seriously considered by the Board.
 - Reasons why alternative methods were rejected in favor of the proposed rulemaking:
There were no alternative methods that were seriously considered by the Board.

Small Business Impact

If the rulemaking will have a substantial impact on small business, include a discussion of whether it would be feasible and practicable to do any of the following to reduce the impact of the rulemaking on small business:

- Establish less stringent compliance or reporting requirements in the rulemaking for small business.
- Establish less stringent schedules or deadlines in the rulemaking for compliance or reporting requirements for small business.
- Consolidate or simplify the rulemaking's compliance or reporting requirements for small business.
- Establish performance standards to replace design or operational standards in the rulemaking for small business.
- Exempt small business from any or all requirements of the rulemaking.

If legal and feasible, how does the rulemaking use a method discussed above to reduce the substantial impact on small business?

These proposed rules do not impose requirements on any small businesses. The rules detail examination passage requirements for persons wishing to practice veterinary medicine in Iowa. Accordingly, there do not appear to be any impacts on small businesses.

Text of Proposed Rulemaking

ITEM 1. Rescind 811—Chapter 7 and adopt the following **new** chapter in lieu thereof:

CHAPTER 7 VETERINARY EXAMINATIONS

811—7.1(169) Examination procedure. In order to successfully complete the NAVLE, an applicant will achieve the minimum passing score as determined by the ICVA. The NAVLE is prepared by the ICVA for use by the board.

7.1(1) The dates for the examination are set by the ICVA. Examinations are held at a site to be determined by the ICVA.

7.1(2) Upon request, the ICVA will attempt to provide adequate individualized testing arrangements for applicants who establish the existence of a verified disability, including a verified learning disability, consistent with the provisions of the Americans with Disabilities Act of 1990 and regulations promulgated thereunder. Verification may be provided by a testing or evaluation agency approved by the ICVA or by a physician approved by the ICVA.

811—7.2(169) Conduct. An examinee who violates any of the ICVA rules or instructions applicable to them may be declared by the board to have failed the examination.

7.2(1) The ability of an examinee to read and interpret instructions will be evaluated and considered by the board as part of the examination.

7.2(2) Any examinee who gives or receives unauthorized assistance in any portion of the examination may be dismissed from the examination.

7.2(3) If the examinee fails the examination and desires to take a subsequent examination, the examinee will notify the board at least 60 days prior to the first day of the next examination, will certify that the material statements contained in the original applications are currently true and correct, will supplement that information as necessary, and will pay the requisite fee.

These rules are intended to implement Iowa Code chapters 17A and 169.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 811—Chapter 8
“Auxiliary Personnel”

Iowa Code section(s) or chapter(s) authorizing rulemaking: 169.5
State or federal law(s) implemented by the rulemaking: Iowa Code chapter 169

Public Hearing

A public hearing at which persons may present their views orally or in writing will be held as follows:

November 13, 2023
10 a.m.

Second Floor Conference Room
Wallace State Office Building
Des Moines, Iowa

Public Comment

Any interested person may submit written comments concerning this Regulatory Analysis. Written comments in response to this Regulatory Analysis must be received by the Board of Veterinary Medicine no later than 4:30 p.m. on the date of the public hearing. Comments should be directed to:

Colin Tadlock
Iowa Department of Agriculture and Land Stewardship
Wallace State Office Building
502 East 9th Street
Des Moines, Iowa 50319
Email: colin.tadlock@iowaagriculture.gov

Purpose and Summary

Chapter 8 includes the process for obtaining a license or certificate from the Board of Veterinary Medicine to be veterinary assistants/auxiliary personnel and describes the authority and limitations of what veterinary assistants/auxiliary personnel are allowed to perform. The Iowa Legislature recently enacted 2023 Iowa Acts, House File 670, significantly overhauling the authority/limitations of veterinary assistants/auxiliary personnel, which renders most, if not all, of Chapter 8 obsolete. The Board is in the process of engaging stakeholders and preparing proposed rules to implement House File 670 by December 31, 2023, which is required by House File 670. Because nearly all of Chapter 8 will be rescinded and replaced as part of the rulemaking process under House File 670, the Board has limited its analysis of the current rules in Chapter 8 as being obsolete but will conduct its rulemaking process under House File 670 consistent with the requirements of Executive Order 10.

Analysis of Impact

1. Persons affected by the proposed rulemaking:
 - Classes of persons that will bear the costs of the proposed rulemaking:
See discussion in Purpose and Summary section.
 - Classes of persons that will benefit from the proposed rulemaking:
See discussion in Purpose and Summary section.
2. Impact of the proposed rulemaking, economic or otherwise, including the nature and amount of all the different kinds of costs that would be incurred:
 - Quantitative description of impact:
See discussion in Purpose and Summary section.

- Qualitative description of impact:
See discussion in Purpose and Summary section.
- 3. Costs to the State:
 - Implementation and enforcement costs borne by the agency or any other agency:
See discussion in Purpose and Summary section.
 - Anticipated effect on state revenues:
See discussion in Purpose and Summary section.
- 4. Comparison of the costs and benefits of the proposed rulemaking to the costs and benefits of inaction:
See discussion in Purpose and Summary section.
- 5. Determination whether less costly methods or less intrusive methods exist for achieving the purpose of the proposed rulemaking:
See discussion in Purpose and Summary section.
- 6. Alternative methods considered by the agency:
 - Description of any alternative methods that were seriously considered by the agency:
See discussion in Purpose and Summary section.
 - Reasons why alternative methods were rejected in favor of the proposed rulemaking:
See discussion in Purpose and Summary section.

Small Business Impact

If the rulemaking will have a substantial impact on small business, include a discussion of whether it would be feasible and practicable to do any of the following to reduce the impact of the rulemaking on small business:

- Establish less stringent compliance or reporting requirements in the rulemaking for small business.
- Establish less stringent schedules or deadlines in the rulemaking for compliance or reporting requirements for small business.
- Consolidate or simplify the rulemaking's compliance or reporting requirements for small business.
- Establish performance standards to replace design or operational standards in the rulemaking for small business.
- Exempt small business from any or all requirements of the rulemaking.

If legal and feasible, how does the rulemaking use a method discussed above to reduce the substantial impact on small business?

See discussion in Purpose and Summary section.

Text of Proposed Rulemaking

ITEM 1. Rescind 811—Chapter 8 and adopt the following **new** chapter in lieu thereof:

CHAPTER 8 AUXILIARY PERSONNEL

811—8.1(169,17A) Definitions. As used in these rules, the following terms mean:

“Accredited school of veterinary technology” means a two-year college level training program providing basic training leading to a certificate of completion of a two-year program recognized and

approved by the AVMA committee on accreditation of training for veterinary technicians or recognized and approved by the board.

“Board” means the same as defined in Iowa Code section 169.3(4).

“Department” means the Iowa department of agriculture and land stewardship.

“Veterinary assistant” means the same as defined in Iowa Code section 169.3(12).

“Veterinary technician” means any citizen of the United States who has graduated in veterinary technology from a two-year AVMA accredited school of veterinary technology; or in lieu thereof has assisted a licensed veterinarian for five years prior to 1980, or worked under the direction of a licensed veterinarian for at least three years, including at least one year of formal training approved by the board, in veterinary technology prior to 1981; and who has successfully passed an examination prescribed by the board.

811—8.2(169) Registration of veterinary technicians. All veterinary technicians are under the direct control of the board and are registered with the state veterinarian, bureau of animal industry, Iowa department of agriculture and land stewardship. Each veterinary technician is to pass both the veterinary technician national examination and a veterinary technician state examination as approved by the board. Applications for registration are obtained from and remitted to the board. Applicants who have passed both examinations are issued a certificate by the board stating that the named candidate is registered as a veterinary technician.

811—8.3(169) Examination. The veterinary technician state examination is given at least once annually at a site or sites to be designated by the board at least 60 days before the date of the examination. The board may provide for additional veterinary technician state examinations as deemed appropriate. In the event the board provides for additional examinations, the site or sites of the examination are designated by the board at least 60 days prior to the date of the examination.

8.3(1) An application fee in an amount determined by the board not to exceed \$45 is to accompany the application to take the veterinary technician state examination; both the fee and the application must be received by the board at least 30 days before the examination. An additional fee is to be submitted for the veterinary technician examination when a professional examination service is utilized by the board. The additional fees are the charges for the examination by the professional examination service plus administrative costs in an amount determined by the board. The fee for the veterinary technician state examination may be waived for qualifying military service personnel upon request.

8.3(2) An applicant who fails to earn a passing score on the veterinary technician state examination is entitled to retake the examination not earlier than 90 days since the applicant last took the examination. The applicant is to submit a new application and the application fee in accordance with subrule 8.3(1) to retake the veterinary technician state examination. An applicant is limited to five total attempts at the veterinary technician state examination; any additional applications to retake the examination beyond the five allowable attempts may be considered by the board and may be granted at the board’s discretion.

811—8.4 Reserved.

811—8.5(169) Supervision. All veterinary assistants, including veterinary technicians, are employed by and receive compensation from and are under the direct supervision of a licensed or license exempt veterinarian, and function at the same place of business as the veterinarian. Such supervision includes, but is not limited to, the availability of the veterinarian on the premises.

8.5(1) Veterinarian’s responsibility:

a. To personally examine the animal within 12 hours before the assistant carries out any procedures.

b. To direct, control and supervise the conduct of the assistant in the assistant’s work.

8.5(2) Veterinary assistant’s responsibility:

a. The veterinary assistant, including registered veterinarian technicians, will not perform surgery; not make a diagnosis and prognosis of animal diseases; not prescribe drugs, medicine and appliances, and not administer rabies vaccine.

b. Under conditions of an emergency, a veterinary assistant including a registered veterinary technician may render without supervision such lifesaving aid and treatment as follows: administration of oxygen; maintenance of airways including the nonsurgical insertion of an endotracheal tube; and control of hemorrhage. Under conditions of emergency, a registered veterinary technician but not an unregistered veterinary assistant may render such additional lifesaving aid and treatment as follows: placement of an IV catheter and the administration of fluids; external cardiac massage; and the administration of corticosteroids. Emergency aid and treatment, if rendered to an animal not in the presence of a licensed veterinarian, may only be continued under the direction of a licensed veterinarian, which in the case of emergency may include telephone or radio contact by a veterinarian en route to the site, until the veterinarian arrives in a timely manner. “Emergency” for the purpose of this rule means that the animal has been placed in a life-threatening condition where immediate treatment is necessary to sustain life.

811—8.6(169) Revocation or suspension of veterinary technician’s certificate. The following are grounds for revocation or suspension of a certificate at the discretion of the board:

1. Fraud, misrepresentation or deception in obtaining a certificate.
2. Conviction of a felony, in which case the record of such conviction will be conclusive evidence.
3. Chronic inebriety or habitual use of drugs.
4. For having professional connection with, or lending one’s name to any illegal practice of veterinary medicine and the various branches thereof.
5. Conduct reflecting unfavorably on the vocation of veterinary technology.
6. Conviction on the charge of cruelty to animals.
7. Failure to satisfy the continuing education requirements of rule 811—8.10(169,272C).

811—8.7(169) Action against veterinarians. The board of veterinary medicine will take action against any veterinarian licensed to practice in the state of Iowa who:

1. Permits or directs any veterinary assistant, including a registered veterinary technician, to perform veterinary duties involving diagnosis, prescription or surgery.
2. Permits or directs any veterinary assistant, including a registered veterinary technician, to perform any act which would be a legal or ethical violation if committed by the veterinarian.

811—8.8(169,272C) Disciplinary procedure. Disciplinary action taken under rule 811—8.6(169) or 811—8.7(169) follows the procedure established by rule 811—10.50(169,272C). Where appropriate, references in rule 811—10.50(169,272C) to a person licensed to practice veterinary medicine are construed to mean persons certified as a veterinary assistant or technician.

811—8.9(169,272C) Certification by endorsement. On a case-by-case basis, the board may issue certification by endorsement and without examination to applicants who hold certification or licensure as veterinary technicians in another jurisdiction.

811—8.10(169,272C) Continuing education.

8.10(1) Each registered veterinary technician completes, triennially, at least 30 hours of continuing education in courses approved by the board. The registrant has the responsibility for financing continuing education. These credit hours may be obtained by attending approved scientific seminars and meetings on the basis of one credit hour for each hour of attendance. Attendance at any board-approved national, state or regional meeting will be acceptable. Credit for qualified graduate college courses may be approved on the basis of multiplying each college credit hour by 10, to a maximum of 15 hours during any one triennial. A maximum of 10 hours during any one triennial may be achieved by the completion of approved home study courses.

8.10(2) Each registrant is to obtain the 30 credit hours between the registrant's certificate anniversary date and the last day of the following three-year period. However, a registrant who graduated from an accredited college of veterinary technology within three years of the issuance of an Iowa certificate has to obtain only 20 credit hours for the first triennial. Continuing education credits in excess of 30 hours for any three-year period may be carried over to the next triennial period, but the total number of credits carried over cannot exceed 10 hours.

8.10(3) Completion of the continuing education will be reported to the secretary of the board of veterinary medicine on forms provided by the board by December 31 of the triennial anniversary year. The registrant will sign the reporting form and include an administration fee of \$15.

8.10(4) The board may waive continuing education requirements for qualifying military service personnel upon request.

811—8.11(272C) Registration as veterinary technician by verification. Registration by verification for a veterinary technician is available in accordance with the following:

8.11(1) Eligibility. A person may seek registration by verification if the person is registered or licensed in at least one other jurisdiction and in circumstances set forth by Iowa Code section 272C.12(1).

8.11(2) Board application. The applicant is to submit the following:

- a. A completed application for registration by verification.
- b. Payment of the application fee.
- c. A verification form, completed by the licensing/registration authority in the jurisdiction that issued the applicant's license or registration, verifying that the applicant's license or registration in that jurisdiction complies with the requirements of Iowa Code section 272C.12. The completed verification form is sent directly from the licensing/registration authority to the board. This form is available on the board's website.
- d. Proof of passing Iowa's veterinary technician state examination.
- e. A copy of the relevant disciplinary documents if another jurisdiction has taken disciplinary action against the applicant.

8.11(3) Applicants with prior discipline or pending licensing complaints or investigations. If another jurisdiction has taken disciplinary action against an applicant or if the applicant has a complaint, allegation, or investigation relating to unprofessional conduct pending before any regulating entity in another jurisdiction, the board will proceed according to Iowa Code section 272C.12(1) "f."

8.11(4) Limitations. A person who has had a license/registration revoked, or who has voluntarily surrendered a license/registration while under investigation for unprofessional conduct in another jurisdiction, is ineligible for registration by verification.

811—8.12(272C) Applicants with work experience in jurisdictions without licensure requirements.

8.12(1) Work experience. An applicant for initial registration who has relocated to Iowa from another jurisdiction where the applicant did not need a professional license/registration to practice in the profession may be considered to have met any educational and training requirements if the person meets the requirements detailed in Iowa Code section 272C.13(1). The applicant is to satisfy all other requirements, including passing any necessary examinations, to receive a license.

8.12(2) Board application. The applicant submits the following:

- a. A completed application for registration through work experience.
- b. Payment of the application fee.
- c. Proof of passing both the veterinary technician national examination and Iowa's veterinary technician state examination.

8.12(3) Mandatory documentation. An applicant who wishes to substitute work experience in lieu of satisfying applicable education or training requirements carries the burden of providing all of the following by submitting relevant documents as part of a completed registration application:

- a. Proof of Iowa residency, which may include one or more of the following:
 - (1) A residential mortgage, lease, or rental agreement;

- (2) A utility bill;
 - (3) A bank statement;
 - (4) A paycheck or pay stub;
 - (5) A property tax statement;
 - (6) A document issued by the federal or state government; or
 - (7) Any other board-approved document that reliably confirms Iowa residency.
- b.* Proof of three or more years of work experience within the four years preceding the application for registration, which may include one or more of the following:
- (1) A letter from the applicant's prior employer documenting the dates of employment;
 - (2) Paychecks or pay stubs; or
 - (3) Any other board-approved evidence of sufficient work experience.
- c.* Proof that the work experience was in a practice with a scope of practice substantially similar to that for the registration sought in Iowa, which includes:
- (1) A written statement by the applicant detailing the scope of practice; and
 - (2) Business or marketing materials detailing the services provided.
- d.* Proof that a professional license/registration was not mandatory in the other state, which may include:
- (1) Copies of applicable laws;
 - (2) Materials from a website operated by a governmental entity; or
 - (3) Materials from a national professional association.
- These rules are intended to implement Iowa Code sections 17A.3, 169.4, 169.5, 169.9, 169.12, 169.20 and 272C.4.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 811—Chapter 9
“Temporary Veterinary Permits”

Iowa Code section(s) or chapter(s) authorizing rulemaking: 169.5
State or federal law(s) implemented by the rulemaking: Iowa Code chapter 169

Public Hearing

A public hearing at which persons may present their views orally or in writing will be held as follows:

November 13, 2023
10 a.m.

Second Floor Conference Room
Wallace State Office Building
Des Moines, Iowa

Public Comment

Any interested person may submit written comments concerning this Regulatory Analysis. Written comments in response to this Regulatory Analysis must be received by the Board of Veterinary Medicine no later than 4:30 p.m. on the date of the public hearing. Comments should be directed to:

Colin Tadlock
Iowa Department of Agriculture and Land Stewardship
Wallace State Office Building
502 East 9th Street
Des Moines, Iowa 50319
Email: colin.tadlock@iowaagriculture.gov

Purpose and Summary

Proposed Chapter 9 outlines the process and requirement to obtain temporary veterinary permits. The chapter defines the different types of temporary permits and what is required to obtain one. One of the temporary permits is the temporary education permit. The benefit of this permit is that it allows Iowa State University to permit interns and residents to practice under the scope of the program at Iowa State University College of Veterinary Medicine. The chapter also defines the grounds for discipline and disciplinary procedures.

Analysis of Impact

1. Persons affected by the proposed rulemaking:

- Classes of persons that will bear the costs of the proposed rulemaking:

Persons seeking temporary licensure to practice veterinary medicine in Iowa will bear the costs.

- Classes of persons that will benefit from the proposed rulemaking:

The general public will benefit from this rulemaking, as well as Iowa State University College of Veterinary Medicine. Veterinarians employed by temporary licensure at Iowa State University may have specialized training and education allowing them to offer specialized coursework not currently available. Pet and livestock owners are also specific persons who will benefit.

2. Impact of the proposed rulemaking, economic or otherwise, including the nature and amount of all the different kinds of costs that would be incurred:

- Quantitative description of impact:

There are no direct costs to the public imposed by this rulemaking.

- Qualitative description of impact:

The only qualitative impact of the rulemaking would be the underlying substantive requirements applicants for temporary licensure must meet in order to obtain licensure. Those impacts include certain educational or experiential minimums.

3. Costs to the State:

- Implementation and enforcement costs borne by the agency or any other agency:

Costs borne will be minimal. The application process requires applicants to pay a fee to mitigate some of the costs to the State to review and approve license applications.

- Anticipated effect on state revenues:

The anticipated effect on state revenues will be minimal.

4. Comparison of the costs and benefits of the proposed rulemaking to the costs and benefits of inaction:

Inaction would far exceed the costs associated with this rulemaking. Iowa State University College of Veterinary Medicine would be greatly limited in its ability to operate with enough veterinary staff. Practices that rely on qualified veterinarians who wish to only practice for a limited time would also be at a disadvantage without this rulemaking.

5. Determination whether less costly methods or less intrusive methods exist for achieving the purpose of the proposed rulemaking:

There are no alternatives to address this specific temporary permit.

6. Alternative methods considered by the agency:

- Description of any alternative methods that were seriously considered by the agency:

No alternative methods were considered.

- Reasons why alternative methods were rejected in favor of the proposed rulemaking:

No alternative methods were considered.

Small Business Impact

If the rulemaking will have a substantial impact on small business, include a discussion of whether it would be feasible and practicable to do any of the following to reduce the impact of the rulemaking on small business:

- Establish less stringent compliance or reporting requirements in the rulemaking for small business.
- Establish less stringent schedules or deadlines in the rulemaking for compliance or reporting requirements for small business.
- Consolidate or simplify the rulemaking's compliance or reporting requirements for small business.
- Establish performance standards to replace design or operational standards in the rulemaking for small business.
- Exempt small business from any or all requirements of the rulemaking.

If legal and feasible, how does the rulemaking use a method discussed above to reduce the substantial impact on small business?

This rulemaking does not impose requirements on any businesses, just licensure requirements on persons wishing to obtain temporary permits to practice veterinary medicine in Iowa. The rulemaking may actually benefit small businesses by providing for the ability to temporarily hire or retain experts in certain fields of veterinary medicine who would otherwise prove cost-prohibitive if required to be hired/retained full-time.

Text of Proposed Rulemaking

ITEM 1. Rescind 811—Chapter 9 and adopt the following new chapter in lieu thereof:

CHAPTER 9
TEMPORARY VETERINARY PERMITS

811—9.1(169) Eligibility for a temporary permit.

9.1(1) *Temporary educational permit.* For the purpose of this subrule, “qualified applicant” means a person who is undertaking internship or residency training at Iowa State University College of Veterinary Medicine. A temporary educational permit may be issued upon application to a qualified applicant who does not also seek an Iowa veterinary license. A temporary educational permit allows the permit holder to act as a licensed veterinarian, including for privately owned animals, but only within the scope of the permit holder’s internship or residency program at Iowa State University College of Veterinary Medicine. Verification of internship or residency consists of an endorsement signed by the dean of the school and submitted directly to the board by the school. A temporary educational permit expires upon termination of the permit holder’s internship or residency program, as reported by the dean of the school of veterinary medicine. An initial temporary educational permit may be issued by the board for a term of up to two years. An initial temporary educational permit may be renewed by the board for a term of up to one year. No more than two renewals will be granted to the same person.

9.1(2) *Temporary in-state practice permit.*

a. A temporary in-state practice permit may be issued upon application to a qualified applicant who does not also seek an Iowa license. For the purpose of this subrule, “qualified applicant” means a person who:

(1) Has graduated from an AVMA-accredited or AVMA-listed school of veterinary medicine or has received an ECFVG or PAVE certificate.

(2) Is licensed in good standing in another jurisdiction.

(3) Has, in the case of an applicant with a non-Iowa license seeking licensure under Iowa Code section 169.10(1):

1. Successfully completed the National Board Examination (NBE) if the applicant’s non-Iowa license was issued between December 31, 1964, and December 31, 1979.

2. Successfully completed the NBE and the Clinical Competency Test (CCT) if the applicant’s non-Iowa license was issued between January 1, 1980, and December 31, 2000.

3. Successfully completed the NAVLE in accordance with rule 811—7.1(169) if the applicant’s non-Iowa license was issued on or after January 1, 2001.

b. The temporary permit is issued in accordance with Iowa Code section 169.11(2). The temporary in-state practice permit allows the permit holder to act as a licensed veterinarian in this state. A person cannot obtain more than three temporary permits.

811—9.2(169) Application.

9.2(1) An application for a temporary permit is to be made on a form provided by the board. The application will state whether the applicant is applying for a temporary educational permit or a temporary in-state practice permit. The applicant will provide a statement indicating all jurisdictions in which the applicant is or has ever been licensed to practice veterinary medicine and consent to the release of information to the board from jurisdictions in which the applicant is or has ever been licensed.

9.2(2) The board may require from an applicant or obtain from other sources such other information pertinent to character and education of the applicant as it may deem necessary in order to pass upon the applicant’s qualifications.

9.2(3) In the case of an applicant under subrule 9.1(2), the applicant will provide evidence of approved continuing education totaling at least 60 hours obtained in the previous three years.

9.2(4) The temporary permit fee and the application fee will accompany the application.

811—9.3(169) Practice without benefit of temporary permit or Iowa license. An applicant for a temporary permit or an Iowa license cannot engage in the practice of veterinary medicine unless and

until a temporary permit or Iowa license is granted by the board. Prior to the issuance of the temporary permit or Iowa license, an applicant who is otherwise qualified under rule 811—9.1(169) may perform within the same scope of authority as a licensed veterinary technician, as provided in 811—Chapter 8.

811—9.4(169) Grounds for discipline and disciplinary procedures. A disciplinary action against a permit holder, including grounds for disciplinary action, is governed by 811—Chapter 10. In addition to the applicable grounds set forth in 811—Chapter 10, an applicant for a temporary permit or an Iowa license who engages in the practice of veterinary medicine prior to the issuance of the temporary permit or Iowa license is subject to denial or revocation of the temporary permit, denial or revocation of the Iowa license, and referral for civil or criminal prosecution, at the board's discretion.

These rules are intended to implement Iowa Code chapter 169.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 811—Chapters 10 and 16
“Grounds for Discipline, Ethical Responsibilities, Contested Cases”

Iowa Code section(s) or chapter(s) authorizing rulemaking: 169.5
State or federal law(s) implemented by the rulemaking: Iowa Code chapter 169

Public Hearing

A public hearing at which persons may present their views orally or in writing will be held as follows:

November 13, 2023
10 a.m.

Second Floor Conference Room
Wallace State Office Building
Des Moines, Iowa

Public Comment

Any interested person may submit written comments concerning this Regulatory Analysis. Written comments in response to this Regulatory Analysis must be received by the Board of Veterinary Medicine no later than 4:30 p.m. on the date of the public hearing. Comments should be directed to:

Colin Tadlock
Iowa Department of Agriculture and Land Stewardship
Wallace State Office Building
502 East 9th Street
Des Moines, Iowa 50319
Email: colin.tadlock@iowaagriculture.gov

Purpose and Summary

Chapter 10 provides the public and regulated community with the grounds for discipline available to the Board of Veterinary Medicine for licensees, the ethical responsibilities of licensees, and the process for conducting a contested case hearing for disciplinary matters. The Board reviewed Chapter 10 and identified several words that were unnecessary and redundant of statute. The Board also determined it could significantly reduce the length and volume of Chapter 10 through adoption by reference of the uniform standards for contested case proceedings. The adoption by reference of the uniform rules will be located in new Chapter 16.

Analysis of Impact

1. Persons affected by the proposed rulemaking:

- Classes of persons that will bear the costs of the proposed rulemaking:

All licensees bear some cost by complying with Board rules and ethical responsibilities, but the bulk of the costs will only be borne by those who violate the Board’s rules.

- Classes of persons that will benefit from the proposed rulemaking:

The public and regulated community will both benefit. Compliance with the Board’s rules and these ethical responsibilities will ensure licensees practice veterinary medicine in conformance with the standards set by the Board to protect animals and the public.

2. Impact of the proposed rulemaking, economic or otherwise, including the nature and amount of all the different kinds of costs that would be incurred:

- Quantitative description of impact:

The only costs would be imposed on licensees, and those costs could vary depending upon the scope and severity of any violations. Licensees are required to meet certain minimum standards to protect animals and the public, which standards can include required equipment, training, sanitation, recordkeeping, and supervision of staff. In the event of any violations, the Board may impose civil penalties, but the penalties are commensurate with the scope and severity of the violations, as well as the licensee's disciplinary history, if any.

- Qualitative description of impact:

The qualitative impact is the same as the quantitative impact.

3. Costs to the State:

- Implementation and enforcement costs borne by the agency or any other agency:

The costs would be limited to time spent by the Board and staff reviewing and investigating complaints, preparing and pursuing license disciplinary actions, conducting the contested case hearing and defending any appeals. Some of those costs are covered by the fees assessed by the Board as part of its findings in a contested case proceeding.

- Anticipated effect on state revenues:

There are minimal effects on state revenues since some of the costs to the State are covered by the fees assessed by the Board for contested case proceedings, and the Board is generally funded by the license fees paid by the regulated community.

4. Comparison of the costs and benefits of the proposed rulemaking to the costs and benefits of inaction:

Failure to have grounds for discipline, ethical responsibilities, or a specific process that governs contested case proceedings would render Iowa Code chapter 169 impotent and risk violating the due process rights of the regulated community.

5. Determination whether less costly methods or less intrusive methods exist for achieving the purpose of the proposed rulemaking:

There does not appear to be any less costly method because failure to have either grounds for discipline, ethical responsibilities, or a contested case process could greatly expose the State to liabilities from legal challenges by the public and the regulated community.

6. Alternative methods considered by the agency:

- Description of any alternative methods that were seriously considered by the agency:

No alternative methods were considered.

- Reasons why alternative methods were rejected in favor of the proposed rulemaking:

No alternative methods were considered.

Small Business Impact

If the rulemaking will have a substantial impact on small business, include a discussion of whether it would be feasible and practicable to do any of the following to reduce the impact of the rulemaking on small business:

- Establish less stringent compliance or reporting requirements in the rulemaking for small business.

- Establish less stringent schedules or deadlines in the rulemaking for compliance or reporting requirements for small business.

- Consolidate or simplify the rulemaking's compliance or reporting requirements for small business.

- Establish performance standards to replace design or operational standards in the rulemaking for small business.

- Exempt small business from any or all requirements of the rulemaking.

If legal and feasible, how does the rulemaking use a method discussed above to reduce the substantial impact on small business?

Only licensees that violate the Board's rules or ethical responsibilities are subject to Board discipline, and there does not appear to be any significant impact on small businesses having standards for the Board to impose discipline and conduct a contested case proceeding.

Text of Proposed Rulemaking

ITEM 1. Rescind 811—Chapter 10 and adopt the following **new** chapter in lieu thereof:

CHAPTER 10
DISCIPLINE

811—10.1(17A,169,272C) Board authority. The board may discipline any credential holder for any grounds stated in Iowa Code chapters 169 and 272C or rules promulgated thereunder.

811—10.2(17A,169,272C) Complaints and investigations.

10.2(1) Complaints are allegations of wrongful acts or omissions relating to the ethical or professional conduct of a credential holder.

10.2(2) The executive secretary or authorized designee investigates complaints in order to determine the probability that a violation of law or rule has occurred.

811—10.3(17A,169,272C) Investigatory subpoena powers. The board has the authority to issue an investigatory subpoena in accordance with the provisions of Iowa Code section 17A.13.

10.3(1) A subpoena which requires production of real evidence that is necessary to an investigation may be issued upon the authority of the executive secretary or a designee.

10.3(2) Any person who is aggrieved or adversely affected by compliance with the subpoena and who desires to challenge the subpoena has 14 days after the service of the subpoena, or before the time specified for compliance if such time is less than 14 days, to file with the board a motion to quash or modify the subpoena. The motion will describe legal reasons why the subpoena should be quashed or modified and may be accompanied by legal briefs or factual affidavits.

10.3(3) Iowa Code section 272C.6(3)“a”(3) contains information regarding what happens in the event obedience to a subpoena is refused.

811—10.4(17A,169,272C) Board action. The board will review investigative conclusions and take one of the following actions:

1. Close the investigative case without action.
2. Request further inquiry.
3. Appoint a peer review committee to assist with the investigation.
4. Determine the existence of sufficient probable cause and order a disciplinary hearing to be held in compliance with Iowa Code section 272C.6.

811—10.5(17A,169,272C) Peer review committee. The board may establish a peer review committee to assist with the investigative process when deemed necessary.

10.5(1) The committee will determine if the conduct of the credential holder conforms to minimum standards of acceptable and prevailing practice of veterinary medicine or other applicable standards and submit a report of its findings to the board.

10.5(2) The board will review the committee's findings and proceed with action available under rule 811—10.4(17A,169,272C).

10.5(3) The confidentiality requirements imposed by Iowa Code section 272C.6 apply to the peer review committee.

811—10.6(17A,169,272C) Grounds for discipline and principles of veterinary medical ethics. The provisions of Iowa Code sections 272C.10 and 169.13 are incorporated by reference. The board has established grounds for discipline and principles of ethics for veterinary medicine. Without regard as to whether the board has determined that an injury has occurred, the board may impose any of the disciplinary sanctions set forth in rule 811—10.7(17A,169,272C), including civil penalties in an amount not to exceed \$10,000, when the board determines that the credential holder is guilty of any of the following acts or offenses:

10.6(1) *Grounds applicable to all credential holders.*

a. Fraud in procuring a credential, which includes but is not limited to an intentional perversion of the truth in making application for a credential to practice any of the professions or activities regulated by the board in this state and includes false representations of a material fact, whether by word or by conduct, by false or misleading allegations, or by concealment of that which should have been disclosed when making application for a credential in this state, or attempting to file or filing with the board or the Iowa department of agriculture and land stewardship any false or forged diploma, certificate, affidavit, identification, or qualification in making an application for a credential in this state.

b. Professional incompetency of a credential holder may be established by:

(1) A substantial lack of knowledge or ability to discharge professional obligations within the scope of the credential holder's practice.

(2) A substantial deviation by the credential holder from the standards of learning or skill ordinarily possessed and applied by other credential holders acting in the same or similar circumstances.

(3) A willful or repeated departure from or the failure to conform to the minimal standards of acceptable and prevailing practice of credential holders.

(4) Knowingly making misleading, deceptive, untrue or fraudulent representations in the practice of the profession or engaging in unethical conduct or practice harmful or detrimental to the public.

1. Knowingly making misleading, deceptive, untrue or fraudulent representations in the practice of the profession includes, but is not limited to, an intentional perversion of the truth, either orally or in writing, and includes any representation contrary to legal or equitable duty, trust or confidence and is deemed by the board to be contrary to good conscience, prejudicial to the public welfare or may operate to the injury of another.

2. Practice harmful or detrimental to the public includes, but is not limited to, the failure of a credential holder to possess and exercise that degree of skill, learning and care expected of a reasonable, prudent credential holder acting in the same or similar circumstances, including for a veterinarian a violation of the standards of practice as set out in 811—Chapter 12, or when a credential holder is unable to practice with reasonable skill and safety on a client's animals as a result of a mental or physical impairment or chemical abuse.

c. Habitual intoxication or addiction to the use of drugs means the same as Iowa Code section 169.13(1) "*h.*" The board may mandate a credential holder's completion of a treatment program as a condition of probation or suspension and will consider the credential holder's willingness to complete a treatment program when determining the appropriate degree of disciplinary sanction.

d. Conviction of a felony or misdemeanor, which includes, but is not limited to, the conviction of a public offense in the practice of the credential holder's profession and is defined or classified as a felony under state or federal law, or violation of a statute or law designated as a felony in this state, another state, or the United States, which statute or law directly relates to the credential holder's profession or ability to practice within the profession.

e. Fraud in representations as to skill or ability, which includes but is not limited to a credential holder's having made misleading, deceptive or untrue representations as to the credential holder's competency to perform professional services for which the credential holder is not qualified to perform by training or experience.

f. Use of untruthful or improbable statements in advertisements, which includes but is not limited to an action by a credential holder in making information or intention known to the public which is false, deceptive, misleading or promoted through fraud or misrepresentation and includes statements which may consist of, but not be limited to:

- (1) Inflated or unjustified expectations of favorable results;
 - (2) Self-laudatory claims that imply that the credential holder engaged in a field or specialty of practice for which the credential holder is not qualified. A veterinarian is not qualified to claim or imply specialization unless the veterinarian is a member in good standing of the respective specialty board or college recognized by the AVMA;
 - (3) Representations that are likely to cause the average person to misunderstand; or
 - (4) Extravagant claims or claims of extraordinary skills not recognized by the credential holder's profession.
- g. Willful or repeated violations of the provisions of Iowa Code chapters 169 and 272C and rules promulgated thereunder by the board.
- h. Failure to report a license, certificate, permit, or other credential revocation, suspension or other disciplinary action taken by a licensing or regulating authority of another state, territory or country within 30 days of the final action by such licensing or regulating authority. A stay by an appellate court cannot negate this requirement; however, if such disciplinary action is overturned or reversed by a court of last resort, such report is expunged from the records of the board.
- i. Failure of a credential holder or an applicant for a credential in this state to report, within 30 days, any settlement agreement or voluntary agreement to limit the practice of veterinary medicine or other applicable activities entered into in another state, district, territory or country or those included in Iowa Code section 272C.9 or 169.13.
- j. Knowingly submitting a false report of continuing education or failure to submit the triennial report of continuing education.
- k. Failure to comply with a subpoena issued by the board.
- l. Willful or gross negligence.
- m. Obtaining any fee by fraud or misrepresentation.
- n. Violating any of the grounds for the revocation or suspension of a credential as listed in Iowa Code section 169.13 or these rules.
- o. A violation of Iowa Code section 169.13(1) "d"; having the person's certificate, license, permit, or other credential revoked or suspended by the United States Department of Agriculture (USDA); or having the veterinarian's USDA accreditation revoked, suspended or other disciplinary action taken against the accreditation. A copy of the record or order of suspension, revocation or disciplinary action is conclusive evidence of the credential holder's having committed one of the following actions:
- (1) Permitting or directing any auxiliary personnel or any other person who does not hold the proper credentials to perform veterinary duties involving diagnosis, prescription or surgery, except as allowed pursuant to rule 811—8.5(169);
 - (2) Permitting or directing any auxiliary personnel or any other person to perform any act which would be a legal or ethical violation if committed by a veterinarian;
 - (3) Failing to comply with a lawful child support order as provided in 811—Chapter 13; or
 - (4) Failing to pay any hearing fees and costs within the time specified in the board's decision.
- p. The board cannot suspend or revoke a license issued by the board to a person who is in circumstances outlined by Iowa Code section 272C.4(10).
- 10.6(2) *Grounds applicable to licensed veterinarians only.*** In addition to the grounds set out in subrule 10.6(1), without regard as to whether the board has determined that injury has occurred, a licensed veterinarian is subject to disciplinary action for the violation of any of the following:
- a. Engaging in unethical conduct which includes, but is not limited to, a violation of the standards of practice as set out in 811—Chapter 12, and which may include acts or offenses in violation of Iowa's principles of veterinary medical ethics, as adopted in subrule 10.6(3).
- b. Engaging in practice harmful or detrimental to the public which includes, but is not limited to, either of the following:
- (1) The use of a rubber stamp to affix a signature to a prescription. A licensee who is unable, due to a physical disability, to make a written signature or mark may substitute in lieu of a signature a rubber stamp which is adopted by the disabled person for all purposes requiring a signature and which is affixed

by the disabled person or affixed by another person upon the request of the disabled person and in the licensee's presence.

(2) The practice of maintaining any presigned prescription which is intended to be completed and issued at a later time.

c. Iowa Code section 169.13(1) "g."

d. Indiscriminately or promiscuously prescribing, administering or dispensing any drug; or prescribing, administering or dispensing any drug for other than a lawful purpose.

e. Negligently failing to exercise due care in the delegation of veterinary services to or in supervision of employees or other individuals, whether or not injury results.

10.6(3) Principles of veterinary medical ethics. All Iowa-licensed veterinarians are expected to adhere to these principles of veterinary medical ethics listed below and adopted by the board.

a. *General ethics principles.*

(1) A veterinarian may only be influenced by the welfare of the patient, the needs of the client, the safety of the public, and the need to uphold the public trust vested in the veterinary profession and shall avoid conflicts of interest or the appearance thereof.

(2) A veterinarian shall provide competent veterinary medical care under the terms of a veterinarian-client-patient relationship (VCPR), with compassion and respect for animal welfare and human health.

(3) A veterinarian shall uphold the standards of professionalism, be honest in all professional interactions, and report veterinarians who are deficient in character or competence to the appropriate entities.

(4) A veterinarian shall not willfully violate the provisions of Iowa Code chapters 169 and 272C and rules promulgated thereunder by the board, or other law of this state, another state, or the United States, which relates to the practice of veterinary medicine.

(5) A veterinarian shall respect the rights of clients, colleagues, and other health professionals and safeguard medical information within the confines of the law.

(6) A veterinarian shall continue to study, apply, and advance scientific knowledge; maintain a commitment to veterinary medical education; make relevant information available to clients, colleagues, and the public; and obtain consultation or referral when indicated.

(7) A veterinarian shall, in the provision of appropriate patient care, be free to choose whom to serve, with whom to associate, and the environment in which to provide veterinary medical care.

(8) A veterinarian shall not advertise a specialty or claim to be a specialist when not a diplomate of a veterinary specialty organization recognized by the AVMA.

b. *Veterinarian-client-patient relationship ethics.* A veterinarian shall not engage in the practice of veterinary medicine without a valid VCPR as defined in these rules.

c. *Veterinarian-client communication; documentation of informed consent.*

(1) A veterinarian shall explain to clients how any diagnostic tests offered would help diagnose a patient's medical condition.

(2) A veterinarian is responsible for professional communication directly with the client regarding diagnosis, options for treatment(s), expected cost of treatment(s), expected outcome of treatment(s), and the potential risks associated with each treatment regimen, as well as the client's ability to decline treatment(s). Client consent for the treatment(s) shall be documented in the patient's medical records. A veterinary assistant may communicate the information listed in this subparagraph to the client under the direct supervision of an Iowa-licensed veterinarian.

(3) If a veterinarian does not have the expertise or the necessary equipment and facilities to adequately diagnose or treat a patient, the veterinarian shall offer a referral to another veterinarian where the diagnosis or treatment can be performed.

d. *Veterinary medical records.*

(1) Complete, accurate and legible medical records that are considered to meet the prevailing standard of the practice of veterinary medicine are set by the board.

(2) Any controlled substances administered to a patient must be written into the patient's medical record, which shall include the drug name, the date the drug was administered, the amount of drug

administered, the frequency of drug administration, and the prescribing (and administering, if different) veterinarian's name, pursuant to rules 811—12.2(169) to 811—12.4(169). This requirement is in addition to regulations and requirements promulgated by the Iowa board of pharmacy, U.S. Drug Enforcement Administration, and any other applicable governmental agency. Violating or failing to comply with a state or federal law or regulation relating to the storing, labeling, prescribing, or dispensing of controlled substances is unethical.

(3) Humane euthanasia of animals is an ethical veterinary procedure. A veterinarian can refuse to perform euthanasia.

e. Client and patient privacy rights.

(1) A veterinarian shall protect and respect the privacy rights of clients, colleagues, and other health professionals. A veterinarian shall not reveal confidential medical records or other medical information unless authorized to do so by law.

(2) It is unethical to place photographs or information regarding a patient, a client, or a client's premises on social media or other public platforms without the consent of the owner, unless the patient, client, or client's premises cannot be identified by its marking and unless all personally identifying information has been removed from the photograph. Use of photographs and information for didactic purposes is permitted with client consent or after removal of any information that would identify the client or patient.

f. Professional behavior.

(1) A veterinarian shall be honest in all professional interactions while respecting the rights of clients, colleagues, and other health professionals. A veterinarian must be honest and fair in relations with others, and a veterinarian shall not engage in fraud, misrepresentation, or deceit, including by material omission, in accordance with Iowa Code section 169.13(1) "a."

(2) A veterinarian must not defame or injure the professional standing or reputation of another veterinarian in a false or misleading manner. Any complaints about behavior of a veterinarian that may violate the principles of veterinary medical ethics should be addressed through the board in an appropriate and timely manner.

(3) A veterinarian who is impaired due to substance abuse or mental health or physical conditions as set forth in Iowa Code section 169.13(1) "h" must not act in the capacity of a veterinarian and shall seek medical treatment from qualified organizations or individuals.

10.6(4) Recommended practices for veterinarians.

a. A veterinarian is encouraged to participate in activities contributing to the improvement of the community and the betterment of public health. The responsibilities of the veterinary profession extend beyond individual patients and clients to society in general.

b. A veterinarian is encouraged to participate in the political process to seek changes to laws and regulations that are contrary to the best interests of the patient, the client and public health.

c. A veterinarian is encouraged to make the veterinarian's knowledge available to the community and to provide the veterinarian's services for activities that protect public health.

d. A veterinarian is encouraged to view, evaluate, and treat all individual persons in any professional activity or circumstance in which the veterinarian may be involved solely as individuals on the basis of the person's personal abilities, qualifications and character.

811—10.7(17A,169,272C) Sanctions. The board has authority to impose disciplinary sanctions in circumstances allowed by Iowa Code section 272C.3(2) "a" through "f."

811—10.8(17A,169,272C) Panel of specialists. The board may appoint a panel of veterinarians who are specialists to ascertain the facts of a case pursuant to Iowa Code section 272C.6(2). The board chairperson or designee appoints the presiding officer.

10.8(1) The executive secretary sets the date, time, and location of the hearing and makes proper notification to all parties.

10.8(2) The panel of specialists shall:

- a. Enter into the record the names of the presiding officer, members of the panel, the parties and their representatives.
- b. Enter into the record the notice and evidence of service, order for hearing, statement of charges, answer, if available, and any other pleadings, motions or orders.
- c. Receive opening statements from the parties.
- d. Receive evidence, in accordance with Iowa Code section 17A.14, on behalf of the state of Iowa and on behalf of the credential holder.
- e. Question the witnesses.
- f. Receive closing statements from the parties.
- g. Determine the findings of fact by a majority vote and make a written report of its findings to the board within a reasonable period.

811—10.9(17A,169,272C) Informal settlement. Pursuant to the provisions of Iowa Code sections 17A.12 and 272C.3, the board may consider resolution of disciplinary matters through informal settlement prior to commencement of contested case proceedings. The secretary or designee may negotiate with the credential holder regarding a proposed disposition of the controversy. Upon consent of both parties, the board will review the proposal for action.

811—10.10(17A,169,272C) Voluntary surrender. A voluntary surrender of credentials may be submitted to the board as resolution of a contested case or in lieu of continued compliance with a disciplinary decision of the board.

811—10.11(17A,169,272C) Application for reinstatement. A person whose credential has been suspended, revoked, or voluntarily surrendered may apply to the board for reinstatement in accordance with the terms and conditions of the order.

10.11(1) If the credential was voluntarily surrendered, or if the order for suspension or revocation did not establish terms and conditions for reinstatement, an initial application cannot be made until one year has elapsed from the date of the order.

10.11(2) The application alleges facts and circumstances which will enable the board to determine that the basis for the sanction or voluntary surrender no longer exists and that it is in the public interest to reinstate the credential. The burden of proof to establish these facts rests with the petitioner.

10.11(3) The hearing in an application for reinstatement is a contested case within the meaning of Iowa Code section 17A.12.

10.11(4) The order to grant or deny reinstatement incorporates findings of fact and conclusions of law. If reinstatement is granted, terms and conditions for reinstating the credential may be imposed.

These rules are intended to implement Iowa Code chapters 17A, 169, and 272C.

ITEM 2. Adopt the following new 811—Chapter 16:

CHAPTER 16 CONTESTED CASES

The board of veterinary medicine adopts, with the following exceptions and amendments, Uniform Rules on Agency Procedure relating to contested cases, which are published at www.legis.iowa.gov/DOCS/Rules/Current/UniformRules.pdf on the general assembly's website.

811—16.1(17A) Scope and applicability. In lieu of “(agency name)” insert “board of veterinary medicine”.

811—16.2(17A) Definitions. In lieu of “(agency name)” insert “board of veterinary medicine”.

“*Contested case*” means the same as defined in Iowa Code section 17A.2(5).

“*Presiding officer*” means the chairperson of the board or designee.

811—16.3(17A) Time requirements.

16.3(2) For good cause, the presiding officer may extend or shorten the time to take any action, except as precluded by statute. Except for good cause stated in the record, before extending or shortening the time to take any action, the presiding officer will afford all parties an opportunity to be heard or to file written arguments.

811—16.5(17A) Notice of hearing. The board will issue an order, notice of hearing, and statement of charges following its determination of probable cause pursuant to Iowa Code section 17A.12(2). Delivery of the notice of hearing constitutes the commencement of the contested case proceeding.

16.5(1) Notice.

a. The date, time, and location of the hearing will be set by the board. The credential holder will be notified at least 30 days prior to the scheduled hearing.

b. Notification will be in writing delivered either by personal service as in civil actions or by certified mail with return receipt requested. When the credential holder cannot be located:

(1) An affidavit will be prepared outlining the measures taken to attempt service and will become a part of the record when a notice cannot be delivered by personal service or certified mail, return receipt requested.

(2) Notice of hearing will be published once each week for three consecutive weeks in a newspaper of general circulation, published or circulated in the county of last-known residence of the credential holder. The newspaper will be selected by the secretary or designee. The first notice of hearing will be published at least 30 days prior to the scheduled hearing.

811—16.6(17A) Presiding officer. Disciplinary hearings will be conducted by the board pursuant to Iowa Code section 272C.6. The chairperson of the board will designate the presiding officer in accordance with the provisions of Iowa Code section 17A.11.

16.6(1) For nondisciplinary proceedings, any party who wishes to request that the presiding officer assigned to render a proposed decision be an administrative law judge employed by the department of inspections, appeals, and licensing must file a written request within 20 days after service of a notice of hearing.

16.6(2) In lieu of “agency (or its designee)” insert “executive secretary”.

c. The board does not adopt X.6(2) “c.”

i. The request would not conform to the disciplinary hearing provision of Iowa Code section 272C.6.

16.6(3) The executive secretary will issue a written ruling specifying the grounds for its decision within 20 days after a request for an administrative law judge is filed.

16.6(4) The board does not adopt X.6(4).

16.6(6) In lieu of “agency heads and members of multimembered agency heads” insert “the board”.

811—16.9(17A) Disqualification.

16.9(4) If a party asserts disqualification on any appropriate ground, including those listed in subrule 16.9(1), the party must file a motion supported by an affidavit pursuant to Iowa Code section 17A.17(7). The motion must be filed as soon as practicable after the reason alleged in the motion becomes known to the party. If, during the course of the hearing, a party first becomes aware of evidence of bias or other grounds for disqualification, the party may move for disqualification but must establish the grounds by the introduction of evidence into the record.

If the presiding officer determines that disqualification is appropriate, the presiding officer or other person must withdraw. If the presiding officer determines that withdrawal is not required, the presiding officer must enter an order to that effect.

811—16.12(17A) Service and filing of pleadings and other papers.

16.12(3) Filing—when required. After the notice of hearing, all pleadings, motions, documents or other papers in a contested case proceeding must be filed with the board.

811—16.15(17A) Motions.

16.15(5) The board does not adopt X.15(5).

811—16.17(17A) Continuances. The executive secretary has the authority to grant a continuance after consultation, if needed, with the chairperson of the board.

A request for continuance of a contested case matter must be submitted in writing to the board not later than seven days prior to the scheduled date of the hearing. Exceptions may be granted at the discretion of the executive secretary only in situations involving extenuating, extraordinary, or emergency circumstances.

811—16.19(17A) Intervention. The board does not adopt X.19.

811—16.22(17A) Default.

16.22(8) The board does not adopt X.22(8).

16.22(10) The board does not adopt X.22(10).

811—16.23(17A) Ex parte communication.

16.23(6) In lieu of “executive director” insert “executive secretary”.

16.23(9) Promptly after being assigned to serve as presiding officer on a hearing panel, as a member of a full board hearing, on an intra-agency appeal, or other basis, a presiding officer must disclose to all parties material factual information received through ex parte communication prior to such assignment, unless the factual information has already been or shortly will be disclosed pursuant to Iowa Code section 17A.13(2) or through discovery. Factual information contained in an investigative report or similar document need not be separately disclosed by the presiding officer as long as such documents have been or will shortly be provided to the parties.

16.23(10) In lieu of “(agency to designate person to whom violations should be reported)” insert “the board’s executive secretary”.

811—16.24(17A) Recording costs. In lieu of “(agency name)” insert “board”.

811—16.25(17A) Interlocutory appeals. The board does not adopt X.25.

811—16.26(17A) Final decision. When the board presides over reception of the evidence at the hearing, its decision is a final decision.

16.26(1) When a panel of specialists presides over the reception of evidence at the hearing, the findings of fact will be considered by the board at the earliest feasible time. The decision of the board is a final decision.

16.26(2) A final decision in a contested case proceeding must be in writing and include findings of fact and conclusions of law, separately stated.

a. Findings of fact must be accompanied by a concise and explicit statement of underlying facts supporting the findings.

b. The decision must include an explanation of why the relevant evidence in the record supports each material finding of fact.

c. Conclusions of law must be supported by cited authority or by a reasoned opinion.

16.26(3) The decision or order must be promptly delivered to the parties in the manner provided by Iowa Code section 17A.12.

16.26(4) The final decision is a public record pursuant to Iowa Code section 272C.6(4).

811—16.27(17A) Appeals.

16.27(1) *Appeal by party.* Any adversely affected party may appeal a final decision of the board to the district court within 30 days after issuance, in accordance with Iowa Code section 17A.19.

16.27(2) *Review.* The board may initiate review of the decision or order on its own motion at any time within 30 days following the issuance of such a decision.

16.27(3) Notice of appeal. In lieu of “a proposed decision” insert “decision or order”, and in lieu of “(agency name)” insert “board”.

16.27(4) Requests to present additional evidence. In lieu of “14 days (or other time period designated by the agency)” insert “15 days”. In lieu of “(board, commission, director)” insert “board”.

16.27(5) Scheduling. In lieu of “(agency name)” insert “board”.

16.27(6) Briefs and arguments. In lieu of “(board, commission, director)” insert “board”.

811—16.28(17A) Applications for rehearing.

16.28(3) Time of filing. In lieu of “(agency name)” insert “board”.

16.28(4) Notice to other parties. In lieu of “(agency name)” insert “board”.

811—16.29(17A) Stays of agency actions. The board does not adopt X.29.

811—16.30(17A) No factual dispute contested cases. If the parties agree that no dispute of material fact exists as to a matter that would be a contested case if such a dispute of fact existed, the parties may present all relevant admissible evidence either by stipulation or otherwise as agreed by the parties, without necessity for the production of evidence at an evidentiary hearing. If such agreement is reached, a jointly submitted schedule detailing the method and timetable for submission of the record, briefs and oral argument should be submitted to the presiding officer for approval as soon as practicable.

811—16.31(272C) Disciplinary hearing—fees and costs.

16.31(1) Definitions. As used in this rule in relation to a formal disciplinary action filed by the board against a credential holder:

“*Deposition*” means the testimony of a person taken pursuant to subpoena or at the request of the state of Iowa taken in a setting other than a hearing.

“*Expenses*” means costs incurred by persons appearing pursuant to subpoena or at the request of the state of Iowa for purposes of providing testimony on the part of the state of Iowa in a hearing or other official proceeding and shall include mileage reimbursement at the rate specified in Iowa Code section 70A.9 or, if commercial air or ground transportation is used, the actual cost of transportation to and from the proceeding. Also included are actual costs incurred for meals and necessary lodging.

“*Medical examination fees*” means actual costs incurred by the board in a physical, mental, chemical abuse, or other impairment-related examination or evaluation of a credential holder when the examination or evaluation is conducted pursuant to an order of the board.

“*Record*” means the proceedings of the hearing including, but not limited to, the transcript and any documentary evidence admitted or offered at the hearing.

“*Transcript*” means a printed verbatim reproduction of everything said on the record during a hearing or other official proceeding.

“*Witness fees*” means compensation paid by the board to persons appearing pursuant to subpoena or at the request of the state of Iowa for purposes of providing testimony on the part of the state of Iowa. For the purpose of this rule, compensation shall be the same as outlined in Iowa Code section 622.69 or 622.72, as applicable.

16.31(2) Disciplinary hearing fee. The board may charge a fee not to exceed the amount authorized in Iowa Code section 272C.6 for conducting a disciplinary hearing which results in disciplinary action taken against the credential holder by the board. An order assessing a fee must be included as part of the board’s final decision. The order must direct the credential holder to deliver payment directly to the department of agriculture and land stewardship as provided in subrule 16.31(6).

16.31(3) Recovery of related hearing costs. The board may also recover from the credential holder the costs for transcripts, witness fees and expenses, depositions, and medical examination fees, if disciplinary action is taken. The board may assess these costs in the manner it deems most equitable in accordance with the following:

a. Transcript costs. The board may assess the transcript costs against the credential holder pursuant to Iowa Code section 272C.6(6) or against the requesting party pursuant to Iowa Code section 17A.12(7).

(1) The cost of the transcript includes the transcript of the original contested case hearing before the board, as well as transcripts of any other formal proceedings before the board which occur after the notice of the contested case hearing is filed.

(2) In the event of an appeal to the full board from a proposed decision, the appealing party must timely request and pay for the transcript necessary for use in the board appeal process.

b. Witness fees and expenses. The parties in a contested case are responsible for any witness fees and expenses incurred by witnesses appearing at the contested case hearing. In addition, the board may assess a credential holder the witness fees and expenses incurred by witnesses called to testify on behalf of the state of Iowa, provided that the costs are calculated as follows:

(1) The costs for lay witnesses will be determined in accordance with Iowa Code section 622.69. For purposes of calculating the mileage expenses allowed under that section, the provisions of Iowa Code section 625.2 do not apply.

(2) The costs for expert witnesses will be determined in accordance with Iowa Code section 622.72. For purposes of calculating the mileage expenses allowed under that section, the provisions of Iowa Code section 625.2 do not apply.

(3) The provisions of Iowa Code section 622.74 regarding advance payment of witness fees and the consequences of failure to make such payment are applicable with regard to witnesses who are subpoenaed by either party to testify at the hearing.

(4) The board may assess as costs the meal and lodging expenses necessarily incurred by witnesses testifying at the request of the state of Iowa. Meal and lodging costs shall not exceed the reimbursement employees of the state of Iowa receive for these expenses under the department of revenue guidelines currently in effect.

c. Deposition costs. Deposition costs for purposes of allocating costs against a credential holder include only those deposition costs incurred by the state of Iowa. The credential holder is directly responsible for the payment of deposition costs incurred by the credential holder.

(1) The costs for depositions include the cost of transcripts, the daily charge of the court reporter for attending and transcribing the deposition, and all mileage and travel time charges of the court reporter for traveling to and from the deposition which are charged in the ordinary course of business.

(2) If the deposition is of an expert witness, the deposition costs include a reasonable fee for an expert witness. This fee must not exceed the expert's customary hourly or daily fee, and must include the time reasonably and necessarily spent in connection with the deposition, including the time spent in travel to and from the deposition, but excluding time spent in preparation for the deposition.

d. Medical examination fees. All costs of physical or mental examinations ordered by the board pursuant to Iowa Code section 272C.9(1) as part of an investigation of a pending complaint or as a sanction following a contested case must be paid directly by the credential holder.

16.31(4) Certification of reimbursable costs. Within ten days after conclusion of a contested case hearing and before issuance of any final decision assessing costs, the secretary must certify any reimbursable costs to the board. The secretary must calculate the specific costs, certify the costs calculated, and file the certification as part of the record in the contested case. A copy of the certification must be served on each party of record at the time of the filing.

16.31(5) Assessment of fees and costs. A final decision of the board imposing disciplinary action against a credential holder must include the amount of any fee assessed. If the board also assesses costs against the credential holder, the final decision must include a statement of costs delineating each category of costs and the amount assessed. The board must specify the time period in which the fees and costs must be paid by the credential holder.

a. A party must file an objection to any fees or costs imposed in a final decision in order to exhaust administrative remedies. An objection must be filed in the form of an application for rehearing pursuant to Iowa Code section 17A.16(2).

b. The application must be resolved by the board consistent with the procedures for ruling on an application for rehearing. Any dispute regarding the calculations of any fees or costs to be assessed may be resolved by the board upon receipt of the parties' written objections.

16.31(6) *Payment of fees and costs.* Payment for fees and costs assessed pursuant to this rule must be made in the form of a check or money order made payable to the state of Iowa and delivered by the credential holder to the department of agriculture and land stewardship.

16.31(7) *Failure to make payment.* Failure of a credential holder to pay any fees and costs within the time specified in the board's decision constitutes a violation of an order of the board and is grounds for disciplinary action.

These rules are intended to implement Iowa Code chapters 17A, 169, and 272C.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 811—Chapter 11
“Continuing Education”

Iowa Code section(s) or chapter(s) authorizing rulemaking: 169.5
State or federal law(s) implemented by the rulemaking: Iowa Code chapter 169

Public Hearing

A public hearing at which persons may present their views orally or in writing will be held as follows:

November 13, 2023
10 a.m.

Second Floor Conference Room
Wallace State Office Building
Des Moines, Iowa

Public Comment

Any interested person may submit written comments concerning this Regulatory Analysis. Written comments in response to this Regulatory Analysis must be received by the Board of Veterinary Medicine no later than 4:30 p.m. on the date of the public hearing. Comments should be directed to:

Colin Tadlock
Iowa Department of Agriculture and Land Stewardship
Wallace State Office Building
502 East 9th Street
Des Moines, Iowa 50319
Email: colin.tadlock@iowaagriculture.gov

Purpose and Summary

This proposed rulemaking establishes minimum continuing education requirements for veterinarians within the state of Iowa. The public benefits by having veterinarians in the state who are continually educated and updated on the most current veterinary medical standards. This will ensure greater quality of life for companion animals and healthy, safe, secure, and humane treatment of livestock that will be harvested and enter the human food supply. Continuing education for veterinarians on matters related to diversion of controlled substances is vital to addressing impaired practitioners.

Analysis of Impact

1. Persons affected by the proposed rulemaking:

- Classes of persons that will bear the costs of the proposed rulemaking:

Veterinarians seeking to maintain their license will bear the cost of seeking out continuing education opportunities.

- Classes of persons that will benefit from the proposed rulemaking:

All pet owners and producers of livestock within the state will benefit. Because veterinarians are an integral part of food safety, the public can be assured that livestock are raised, treated, and harvested in a humane way.

2. Impact of the proposed rulemaking, economic or otherwise, including the nature and amount of all the different kinds of costs that would be incurred:

- Quantitative description of impact:

There are no costs incurred by the public to comply with Chapter 11. The costs incurred by licensed veterinarians can vary depending upon the type and duration of the continuing education program, but

licensees retain the ability to select the courses they take among a diverse array of courses with varying levels of cost.

- Qualitative description of impact:

The qualitative impacts of the rulemaking would likely be limited to the time required (60 hours over a three-year period) to attend and participate in the continuing education courses and preparing and submitting continuing education approvals to the Board.

3. Costs to the State:

- Implementation and enforcement costs borne by the agency or any other agency:

Costs incurred to execute and enforce Chapter 11 are borne by the Iowa Department of Agriculture and Land Stewardship and the Board. The major cost is staff time. Staff and estimated percentage of time allocated are as follows: Executive Secretary of the Iowa Board of Veterinary Medicine (State Veterinarian), 0.15 full-time equivalent (FTE) position; Program Planner 2, 0.60 FTE position; and two Compliance Investigators, 0.40 FTE position each (one Compliance Investigator, 0.80 FTE position). Other costs associated would include but are not limited to hiring expert witnesses, costs associated with hearings, legal staff, and office supplies.

- Anticipated effect on state revenues:

There will be minimal impact on state revenues. Continuing education is reported to the Board as part of the license renewal process, and the application process requires applicants to pay a fee to mitigate some of the costs to the State to review and approve license applications and continuing education.

4. Comparison of the costs and benefits of the proposed rulemaking to the costs and benefits of inaction:

Removing this chapter would potentially have a negative effect on the health and well-being of both companion animals and livestock within the state.

5. Determination whether less costly methods or less intrusive methods exist for achieving the purpose of the proposed rulemaking:

Continuing education is vitally important to ensuring that licensed veterinarians in Iowa are continually updated and educated on new issues and methods to safely and competently practice veterinary medicine. Iowa's requirements are in line with most other states.

6. Alternative methods considered by the agency:

- Description of any alternative methods that were seriously considered by the agency:

No alternative methods were considered.

- Reasons why alternative methods were rejected in favor of the proposed rulemaking:

No alternative methods were considered. The Board reviewed continuing education requirements in other surrounding states, and Iowa is in line with most other states.

Small Business Impact

If the rulemaking will have a substantial impact on small business, include a discussion of whether it would be feasible and practicable to do any of the following to reduce the impact of the rulemaking on small business:

- Establish less stringent compliance or reporting requirements in the rulemaking for small business.

- Establish less stringent schedules or deadlines in the rulemaking for compliance or reporting requirements for small business.

- Consolidate or simplify the rulemaking's compliance or reporting requirements for small business.

- Establish performance standards to replace design or operational standards in the rulemaking for small business.

- Exempt small business from any or all requirements of the rulemaking.

If legal and feasible, how does the rulemaking use a method discussed above to reduce the substantial impact on small business?

This rulemaking does not impose requirements on any businesses, only continuing education requirements on persons wishing to renew their license to practice veterinary medicine in Iowa. Accordingly, there does not appear to be any impact on small business.

Text of Proposed Rulemaking

ITEM 1. Rescind 811—Chapter 11 and adopt the following **new** chapter in lieu thereof:

CHAPTER 11
CONTINUING EDUCATION

811—11.1(169) Continuing education necessary for a veterinary licensee.

11.1(1) Within the last three licensing years, each licensee is to complete at least 60 hours of continuing education in courses approved by the board as a condition for license renewal. The licensee has financial responsibility for the cost of continuing education. These credit hours may be obtained by attending board-approved scientific or practice management seminars and meetings on the basis of one credit hour for each hour of attendance. Attendance at any approved national, state or regional meeting or RACE-approved meeting will be acceptable. One hour of credit may be approved for local meetings where a scientific paper is presented. Credit for qualified graduate college courses may be approved on the basis of multiplying each college credit hour by 10, to a maximum of 30 hours during any one triennial license period. A maximum of 20 hours during any one triennial license period of continuing education may be achieved by completion of approved distance education courses. A maximum of 20 hours of continuing education during any one triennial license period may be achieved by completion of approved practice management courses.

11.1(2) To qualify for license renewal, each licensee is to obtain the 60 credit hours between July 1 of the year the license was issued and June 30 of the following third year. Continuing education credits in excess of 60 hours for any three-year license period may be carried over to the next triennial license period, but the total number of credit hours carried over cannot exceed 20 hours.

11.1(3) A recent graduate is exempt from meeting continuing education requirements at the time of original licensure and for the first year of practice. For the purpose of this rule, “recent graduate” means a person who has graduated from an accredited or approved school of veterinary medicine, or received a certificate from the ECFVG or PAVE no more than three years prior to application for licensure. If a recent graduate is licensed during the first year of the triennial license period, the licensee needs to complete 40 hours of continuing education for the first license renewal. If a recent graduate is licensed during the second year of the triennial license period, the licensee needs to complete 20 hours of continuing education for the first license renewal. If a recent graduate is licensed during the third year of the triennial license period, the licensee is exempt from meeting continuing education requirements for the first license renewal.

11.1(4) Completion of the continuing education requirement will be reported to the secretary of the board, on a form provided by the board, at the time of license renewal. The form is to be signed by the licensee and be accompanied by renewal application and the proper renewal fee.

11.1(5) The board may waive continuing education requirements for qualifying military service personnel upon request.

811—11.2(169) Exemptions for an inactive veterinary licensee. A licensee residing within or outside Iowa who is not engaged in practice in the state of Iowa may be granted a waiver of compliance and obtain a certificate of exemption upon paying the annual license renewal fee. The licensee is to provide a written application to the board that includes a statement that the applicant will not engage in the practice of veterinary medicine in Iowa without first complying with all the rules governing reactivation

after exemption. The application for a certificate of exemption is to be submitted on a form provided by the board.

811—11.3(169) Reactivation of license. A veterinarian whose license has lapsed or been placed on inactive status is to provide evidence of completion of a total number of hours of accredited continuing education computed by multiplying 20 by the number of years since the date of the last issuance of the license for which reactivation is sought.

These rules are intended to implement Iowa Code chapters 169 and 272C.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 811—Chapter 12
“Standards of Practice”

Iowa Code section(s) or chapter(s) authorizing rulemaking: 169.5
State or federal law(s) implemented by the rulemaking: Iowa Code chapter 169

Public Hearing

A public hearing at which persons may present their views orally or in writing will be held as follows:

November 13, 2023
10 a.m.

Second Floor Conference Room
Wallace State Office Building
Des Moines, Iowa

Public Comment

Any interested person may submit written comments concerning this Regulatory Analysis. Written comments in response to this Regulatory Analysis must be received by the Board of Veterinary Medicine no later than 4:30 p.m. on the date of the public hearing. Comments should be directed to:

Colin Tadlock
Iowa Department of Agriculture and Land Stewardship
Wallace State Office Building
502 East 9th Street
Des Moines, Iowa 50319
Email: colin.tadlock@iowaagriculture.gov

Purpose and Summary

This proposed rulemaking establishes minimum requirements for establishing a veterinarian/client/patient relationship. This relationship is needed to comply with federal prescription rules for dispensing medication to animals. The public greatly benefits from ensuring that antibiotics and other prescription medications are being used in a judicious manner when treating animals. This helps to prevent antibiotic resistance in both animals and in humans. In addition, the rulemaking sets record-keeping requirements and establishes minimum standards for veterinary facilities. This is important to ensure that proper care, and continuity of care, for patients is provided.

Analysis of Impact

1. Persons affected by the proposed rulemaking:

- Classes of persons that will bear the costs of the proposed rulemaking:

Licensed veterinarians in the state will bear the cost of maintaining accurate record-keeping systems along with safe, secure, and clean facilities.

- Classes of persons that will benefit from the proposed rulemaking:

All pet owners and producers of livestock within the state will benefit. Because veterinarians are an integral part of maintaining the health and welfare of companion animals and also maintaining food safety, the public can be assured that livestock are raised, treated, and harvested in a safe and humane way with adequate record keeping.

2. Impact of the proposed rulemaking, economic or otherwise, including the nature and amount of all the different kinds of costs that would be incurred:

- Quantitative description of impact:

The only costs would be imposed on licensees, and those costs could vary depending upon the scope of their practices. Licensees are required to meet certain minimum standards to protect animals and the public, which can include required equipment, training, sanitation, record keeping, and supervision of staff.

- Qualitative description of impact:

See prior answer.

3. Costs to the State:

- Implementation and enforcement costs borne by the agency or any other agency:

The costs incurred to execute and enforce this chapter are borne by the Iowa Department of Agriculture and Land Stewardship and the Board. The major cost is staff time. Staff and estimated percentage of time allocated are as follows: Executive Secretary of the Iowa Board of Veterinary Medicine (State Veterinarian), 0.15 full-time equivalent (FTE) position; Program Planner 2, 0.60 FTE position; and two Compliance Investigators, 0.40 FTE position each (one Compliance Investigator, 0.80 FTE position). Other costs associated would include but are not limited to hiring expert witnesses, costs associated with hearings, legal staff, and office supplies.

- Anticipated effect on state revenues:

There is minimal effect on state revenues because some of the costs to the State are covered by the fees assessed by the Board for contested case proceedings, and the Board is generally funded by the license fees paid by the regulated community.

4. Comparison of the costs and benefits of the proposed rulemaking to the costs and benefits of inaction:

Removing this chapter would have a negative effect on the health and well-being of both companion animals and livestock within the state.

5. Determination whether less costly methods or less intrusive methods exist for achieving the purpose of the proposed rulemaking:

There does not appear to be any less costly method because it is critical to properly identify the requirements for a valid veterinarian/client/patient relationship in order to properly authorize and provide care for companion animals and livestock. In addition, minimal standards for issuance of prescriptions, record keeping, and facility requirements are needed to ensure proper care for animals.

6. Alternative methods considered by the agency:

- Description of any alternative methods that were seriously considered by the agency:

No alternative methods were considered.

- Reasons why alternative methods were rejected in favor of the proposed rulemaking:

No alternative methods were considered for the reasons previously stated.

Small Business Impact

If the rulemaking will have a substantial impact on small business, include a discussion of whether it would be feasible and practicable to do any of the following to reduce the impact of the rulemaking on small business:

- Establish less stringent compliance or reporting requirements in the rulemaking for small business.

- Establish less stringent schedules or deadlines in the rulemaking for compliance or reporting requirements for small business.

- Consolidate or simplify the rulemaking's compliance or reporting requirements for small business.

- Establish performance standards to replace design or operational standards in the rulemaking for small business.

- Exempt small business from any or all requirements of the rulemaking.

If legal and feasible, how does the rulemaking use a method discussed above to reduce the substantial impact on small business?

Because some requirements in Chapter 12 are required by federal law, some provisions of the rulemaking cannot be altered to reduce any alleged impacts on small business. The requirements imposed on veterinarians and veterinary clinics may vary depending on the type of practice, record-keeping system, inventory management system, and facilities that they utilize.

Text of Proposed Rulemaking

ITEM 1. Rescind 811—Chapter 12 and adopt the following **new** chapter in lieu thereof:

CHAPTER 12
STANDARDS OF PRACTICE

811—12.1(169) Veterinarian/client/patient relationships.

12.1(1) The board shall determine, on a case-by-case basis, if a valid veterinarian/client/patient relationship exists. This relationship is deemed to exist when all of the following criteria have been met:

a. The licensed veterinarian has assumed the responsibility for making medical judgments regarding the health of the patient and the need for medical treatment, and the client has agreed to follow the instructions of the licensed veterinarian;

b. The licensed veterinarian has sufficient knowledge of the patient to initiate at least a general or preliminary diagnosis of the medical condition of the patient. Sufficient knowledge means that the licensed veterinarian has recently seen or is personally acquainted with the keeping and care of the patient by virtue of any of the following:

- (1) A physical examination of the patient within the past 12 months;
- (2) A professional visit within the past 12 months to the premises where the patient or representative patients are housed, kept, located or grazed; or
- (3) The licensed veterinarian has been temporarily designated by a licensed veterinarian, who has a prior veterinarian/client/patient relationship, to provide reasonable and appropriate medical care. The veterinarian making the designation must meet the requirements of either subparagraph 12.1(1) “b”(1) or 12.1(1) “b”(2), and the designated veterinarian must have access to the patient’s medical records.

The 12-month time period in paragraph 12.1(1) “b” does not apply until June 14, 2023.

c. The licensed veterinarian is readily available or provides for follow-up care in case of adverse reactions or failure of the regimen of therapy, or, if unavailable, has designated another available licensed veterinarian who has access to the patient’s records to provide reasonable and appropriate medical care.

12.1(2) A valid veterinarian/client/patient relationship cannot be established by contact solely based on a telephonic or electronic communication.

12.1(3) In the absence of a veterinarian/client/patient relationship:

a. Advice that is provided through electronic means can only be general and not specific to a particular animal or its diagnosis or treatment.

b. Advice and recommendations may be provided via veterinary telephonic or electronic communication in an emergency, but only until the animal can be examined in person by a licensed veterinarian.

12.1(4) Both the licensed veterinarian and the client have the right to establish or decline a valid veterinarian/client/patient relationship. Once the licensed veterinarian and the client have agreed and entered into a relationship, and the licensed veterinarian has begun patient care, the licensed veterinarian cannot neglect the patient and must continue to provide professional services related to the patient’s injury or illness within the previously agreed limits. As subsequent needs and costs for patient care are identified, the licensed veterinarian and the client must confer and reach agreement on the continued care

and responsibility for fees. If the informed client declines future care or declines to assume responsibility for the fees, the relationship may be terminated by either party.

12.1(5) If no ongoing medical condition exists, a licensed veterinarian may terminate a valid veterinarian/client/patient relationship by notifying the client that the licensed veterinarian no longer wishes to serve that patient and client. However, if an ongoing medical or surgical condition exists, the patient should be referred to another licensed veterinarian for diagnosis, care and treatment and the former attending licensed veterinarian should continue to provide care as needed during the transition.

12.1(6) Concerns about licensed veterinarian or staff safety may result in immediate termination of the veterinarian/client/patient relationship.

12.1(7) In emergencies, a veterinarian has an ethical responsibility to provide essential services for an animal when necessary to save the animal's life or relieve extreme suffering, subsequent to a client agreement (or until such agreement can be obtained when a client is not present or cannot be reached). Such emergency care may be limited to relieve extreme pain or suffering, or to stabilization of the patient for transport to another source of animal care or euthanasia when deemed necessary by the veterinarian. When a veterinarian cannot be available to provide services, the veterinarian should provide readily accessible information to assist a client in obtaining emergency services, consistent with the needs of the locality. In an emergency, if a veterinarian does not have the expertise or the necessary equipment and facilities to adequately diagnose or treat a patient, the veterinarian should advise the client that more qualified or specialized services are available elsewhere and offer to expedite referral to those services.

12.1(8) A licensed veterinarian who in good faith engages in the practice of veterinary medicine by rendering or attempting to render emergency or urgent care to a patient when a client cannot be identified, and a veterinarian/client/patient relationship is not established, is not subject to discipline based solely on the veterinarian's inability to establish a veterinarian/client/patient relationship.

811—12.2(169) Controlled substances, drugs, prescription medications and specific restricted immunization products. When state or federal law restricts a drug, medication or immunization product intended for use by or on the order of a licensed veterinarian, the licensed veterinarian can only sell, distribute or order the drug or medication in the course of the licensed veterinarian's professional practice. A prescription veterinary drug, medication or immunization product shall not be deemed to be used "in the course of the licensed veterinarian's professional practice" unless a valid veterinarian/client/patient relationship exists.

12.2(1) Prescriptions. Orders for all such drugs, medications or immunization products shall be accompanied by the licensed veterinarian's original prescription that shows the following:

- a. Licensed veterinarian's name, address and telephone number;
- b. Client's name;
- c. Patient's name or identification;
- d. Date issued;
- e. Drug, medication or product name, strength and quantity;
- f. Directions for use;
- g. Number of times the prescription may be refilled;
- h. Expiration date of the drug, medication or product; and
- i. Applicable withdrawal period (paragraph 12.2(2)"d") for livestock and poultry.

12.2(2) Extra-label use of veterinary drugs, medications and immunization products. Any extra-label use of veterinary drugs, medications or immunization products can only be administered by or under the order of a licensed veterinarian and is subject to the following criteria:

- a. There is a valid veterinarian/client/patient relationship as defined in subrule 12.1(1).
- b. For drugs or medications used in patients not intended for food, one of the following applies:
 - (1) There are no marketed drugs, medications or immunization products specifically labeled for the condition(s) diagnosed;
 - (2) The approved product is clinically ineffective; or
 - (3) In the licensed veterinarian's clinical judgment, the labeled dosage is inappropriate for the condition or the extra-label use should result in a better outcome for the patient.

c. The health of the treated patient is immediately threatened, or suffering or death would result from a failure to treat the affected patient.

d. The appropriate withdrawal period is specified when the drugs, medications or immunization products are used in animals intended as food. Extra-label drug use in food-producing animals must follow Food and Drug Administration—Animal Medicinal Drug Use Clarification Act regulations (21 CFR Part 530). Licensed veterinarians are encouraged to consult the Food Animal Residue Avoidance Databank (FARAD) or public peer-reviewed documents when determining appropriate withdrawal period.

811—12.3(169) Prescription drug or medication labeling and packaging. A licensed veterinarian shall comply with all of the following requirements for the storage, handling, dispensing and administering of a drug or medication.

12.3(1) All prescription drugs, medications and controlled substances shall be purchased, maintained, handled, prescribed and dispensed in compliance with state and federal requirements including but not limited to the requirements of the Iowa board of pharmacy, the U.S. Occupational Safety and Health Administration, the U.S. Department of Agriculture, the U.S. Food and Drug Administration, the U.S. Environmental Protection Agency and the U.S. Drug Enforcement Administration.

a. A valid veterinarian/client/patient relationship shall be established before prescription drugs or medications may be dispensed or a prescription released. All drugs or medications administered, prescribed or dispensed shall be documented in the patient's medical record. The sale of veterinary prescription drugs or medications or the extra-label use of any drug, medication or product by a licensed veterinarian without a valid veterinarian/client/patient relationship is not permissible.

b. If a veterinarian prescribes a drug for the client's animal, the veterinarian shall, upon request, provide the prescription to the client, unless barred by state or federal law or to prevent inappropriate use. The veterinarian may charge a fee for issuing the prescription. This paragraph does not apply to livestock as defined in Iowa Code section 717.1(4).

12.3(2) All drugs or medications dispensed shall be labeled with the following information:

- a.* Name, telephone number and address of the veterinary clinic, hospital or service facility.
- b.* Name of the prescribing licensed veterinarian.
- c.* Date on which the prescription is dispensed.
- d.* Directions for use, including any cautionary statements and withdrawal times when appropriate.
- e.* Species of the patient.
- f.* Name, or identification, or location of the patient.
- g.* Name of the owner.
- h.* Name, strength and dosage form of the drug or medication. If the drug or medication is a compounded product, all active ingredients must be listed on the label, with corresponding strengths or concentrations of each ingredient.
- i.* Number of units dispensed.
- j.* Expiration date. If the drug or medication is a compounded product with no assigned expiration date, the licensed veterinarian shall determine a beyond-use date as supported by the literature or by the licensed veterinarian's professional judgment when no such supportive information exists.
- k.* Appropriate withdrawal period for livestock or poultry, when the patient or its product is intended as food.

12.3(3) All drugs or medications dispensed in the original container shall retain the original label and be labeled with the same information identified in subrule 12.3(2).

12.3(4) All drugs or medications that are dispensed in a container other than the original container shall be placed in a tamper-resistant container unless otherwise requested by the owner or unless the drug or medication is in a form or size that cannot be easily dispensed in a tamper-resistant container.

12.3(5) Drugs or medications that have expired shall be removed from current inventory and cannot be dispensed or sold. Expired drugs or medications shall be disposed of in accordance with local, state and federal regulations.

12.3(6) Drugs or medications shall be dispensed only for specific animals and for specific veterinary medical therapies with the exception of groups of similar animals and other groups such as pet fish, kennels and catteries for which dispensing shall be done judiciously within a valid veterinarian/client/patient relationship.

811—12.4(169) Veterinary medical records.

12.4(1) *Controlled substances records.* The licensed veterinarian must maintain a controlled substance log that contains complete, accurate and readily retrievable records of all controlled substances possessed, administered or dispensed.

a. Each record of a controlled substance that is dispensed must meet all U.S. Drug Enforcement Administration and Iowa board of pharmacy regulations for the controlled substances log.

b. Each log record must include the following information:

- (1) Name or identification of the patient.
- (2) Client's name and address, if not readily available from the licensed veterinarian's records.
- (3) Name, strength and quantity of the controlled substance dispensed.
- (4) Date on which the controlled substance was dispensed.
- (5) Initials of the dispensing licensed veterinarian or authorized auxiliary.
- (6) Name of the prescribing licensed veterinarian.

c. All controlled substances must be kept in a locked storage area, and access to the storage area must be limited pursuant to state and federal laws and regulations.

d. Each package or container in which a controlled substance is stored or dispensed must be clearly labeled pursuant to the requirements set forth in state and federal laws and regulations.

e. Each package or container in which a controlled substance is stored or dispensed must comply with all state and federal packaging requirements and with rule 811—12.2(169).

12.4(2) *Patient records.* Patient records are the property of the veterinary practice. Each licensed veterinarian shall maintain for at least five years an easily retrievable record for each patient that receives veterinary services. The record must be available for inspection by the client during normal business hours. The information within patient records is privileged and confidential and cannot be released except by court order, a public health emergency, consent of the client or as otherwise authorized by law. The licensed veterinarian in charge shall provide a copy of the complete record to the client not later than two business days after the licensed veterinarian or practice receives from the client a request for the record. A licensed veterinarian or veterinary practice may have an additional three business days to provide a copy of nondigital diagnostic images. The licensed veterinarian may charge reasonable and customary fees for the copying of records.

a. Records required for patients defined as “livestock” in Iowa Code section 717.1(4) include the following:

- (1) Name, address and telephone number of the client.
- (2) Name or identity of the patient, pen, herd, flock or group, including the identification number, if any.
- (3) Date of service.
- (4) Documentation of client consent.
- (5) Diagnosis or condition at the beginning of treatment of the patient, including results of tests.
- (6) Procedures/indications.
- (7) Name of drug or medication and treatment administered indicating dosage, frequency and route of administration.
- (8) Withdrawal period.
- (9) Record of diagnostic images taken.
- (10) Name of attending licensed veterinarian.

b. Records required for other patients include the following:

- (1) Name, address and telephone number of the client.
- (2) Name and identity of the patient, including the identification number, if any.
- (3) Date of birth (or estimated age), sex, species and breed of patient.

- (4) Dates of care, custody or treatment of the patient.
- (5) A history of the patient's condition as it pertains to the patient's medical status.
- (6) Documentation of client consent.
- (7) Diagnosis or condition at the beginning of treatment of the patient, including results of tests and body weight.
- (8) Surgery record, including preanesthesia medication, anesthesia and the procedure performed.
- (9) Name of drug or medication and treatment administered indicating dosage, frequency and route of administration.
- (10) Progress and disposition of the case.
- (11) Record of diagnostic images taken.
- (12) Name of attending licensed veterinarian.

12.4(3) *Stored diagnostic images.*

- a.* Each stored diagnostic image must be identified with the following information:
 - (1) The name of the licensed veterinarian or facility that took the diagnostic image.
 - (2) The name or identifying number, or both, of the patient.
 - (3) The name of the client.
 - (4) The date on which the diagnostic image was taken.
 - (5) The anatomical orientation depicted by the diagnostic image.
- b.* Stored diagnostic images must be retained for at least five years.
- c.* A stored diagnostic image of the patient or a copy must be released, upon the written or verbal request, to another licensed veterinarian who has the authorization of the client. Original diagnostic images shall be returned in a reasonable time.

12.4(4) *General anesthesia.* General anesthesia is a condition caused by the administration of a drug or combination of drugs sufficient to produce a state of unconsciousness or dissociation and blocked response to a given pain or alarming stimulus. The following standards relating to general anesthesia apply:

- a.* Within 12 hours prior to the administration of a general anesthetic, the patient must receive a physical examination, with the results noted in the patient's medical records.
- b.* The patient under general anesthesia must be under observation for a length of time appropriate to the species for the patient's safe recovery.
- c.* The licensed veterinarian must provide a method of respiratory monitoring that may include observing the patient's chest movements, observing the rebreathing bag or using a respirometer.
- d.* The licensed veterinarian must provide a method of cardiac monitoring, which may include the use of a stethoscope or electrocardiograph monitor.

811—12.5(169) Veterinary facilities.

12.5(1) *Facility standards.* The following standards apply to all facilities used by a licensed veterinarian to provide veterinary services.

- a. *Facilities for treatment or hospitalization.** In a facility where patients are examined and retained for treatment or hospitalization, the following must be provided:
 - (1) An examination room, separate from the reception room or office, with sufficient size to accommodate the licensed veterinarian, assistant, patient and client.
 - (2) Nonporous tabletops, countertops and floor coverings that can be adequately cleaned and disinfected.
 - (3) The ability to house patients separately and maintain sanitary conditions.
 - (4) Appropriate separation of patients with known or suspected infectious and contagious diseases from patients not known to have such diseases in a manner that reasonably guards against transmission of disease.
 - (5) Provision for daily exercise of patients unless the primary enclosure is of sufficient size to provide exercise.
 - (6) Exercise areas that are cleaned a minimum of once in each 24-hour period and more frequently as may be necessary to reduce disease hazards and odors.

(7) A sanitary area for performing surgeries under sterile conditions. If sterile surgical procedures are performed on the premises, the licensed veterinarian must maintain the following at all times:

1. Appropriate sterile surgical packs including drapes, sponges and instrumentation for use in each procedure.
2. For each sterile surgical procedure, equipment sterilized and surgical packs properly prepared for sterilization sufficient to kill microorganisms.
3. Clean attire, masks and gloves for use in any sterile procedure.
- (8) Oxygen and equipment necessary to administer oxygen to the types of patients treated in the facility.
- (9) Capability to provide diagnostic radiological images in the facility or through an outside facility.
- (10) Provision for laboratory and pharmaceutical services in the facility or through another commercial facility.

b. Facilities for services. Veterinary service facilities where patients are only examined or provided vaccinations must provide the following:

- (1) An examination room, separate from the reception room or office, with sufficient size to accommodate the licensed veterinarian, assistant, patient and client.
- (2) Nonporous tabletops, countertops and floor coverings that can be adequately cleaned and disinfected.
- (3) A secure and sanitary area for the storage of instruments, drugs and medications.
- (4) Cooling/heating equipment for the storage of drugs, medications and immunization products.
- (5) Capability to provide diagnostic radiological images in the facility or through an outside facility.
- (6) Provision for laboratory and pharmaceutical services in the facility or through another commercial facility.

c. Mobile clinics. Mobile clinics are self-contained units for small animal, nonlivestock or nonpoultry patients and shall be equipped with the following:

- (1) Hot and cold water.
- (2) Nonporous tabletops, countertops and floor coverings that can be adequately cleaned and disinfected.
- (3) An adequate power source for diagnostic equipment.
- (4) A collecting tank for disposal of waste materials.
- (5) Adequate lighting.
- (6) Adequate heating, cooling and ventilation.
- (7) Sterile instrumentation that meets the requirements of the level of surgery to be performed.
- (8) Separate compartments for the transportation or holding of patients.
- (9) A secure and sanitary area for the storage of instruments, drugs and medications.
- (10) Cooling/heating equipment for the storage of drugs, medications and immunization products.

d. House/farm call units. House/farm call units are not self-contained units and must be equipped with or have access to all of the following:

- (1) Water.
- (2) Cooling/heating equipment for the storage of drugs, medications and immunization products.
- (3) A secure and sanitary area for the storage of instruments, drugs and medications.

e. Emergency veterinary hospitals. "Emergency veterinary hospital" means an animal hospital that provides emergency treatment to an ill or injured patient. Any facility advertising as an emergency facility shall have a licensed veterinarian and auxiliary personnel on the premises during the hours of operation. Any facility that advertises using phrases similar or identical to "24-hour emergency veterinary hospital," "Emergency," "Open 24 hours" or "Day or night care" must have treatment services continuously available.

12.5(2) Safety and sanitation standards. A veterinary facility must have a safe and sanitary environment that:

- a.* Protects the health of the patients and guards against the transmission of infection.
- b.* Provides for proper routine disposal of waste materials in compliance with all applicable local, state, and federal laws and regulations and for proper disposal of hypodermic devices, sharps and

biomedical waste. Hypodermic devices, sharps and biomedical waste shall be disposed of in accordance with applicable local, state and federal regulations.

c. Provides for proper sterilization or sanitation of all equipment used in diagnosis, treatment or surgery.

d. Ensures the maintenance of proper temperature and ventilation of the indoor facility.

e. Provides adequate lighting appropriate for the task being performed.

f. Includes legal and sanitary methods for the disposal or storage of deceased patients.

g. Meets the standards for radiological procedures as set by the Iowa department of health and human services.

12.5(3) Resources. A library of current journals or textbooks, or Internet access that provides readily accessible reference materials, shall be available.

These rules are intended to implement Iowa Code chapter 169.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 811—Chapter 13
“Collection Procedures”

Iowa Code section(s) or chapter(s) authorizing rulemaking: 169.5
State or federal law(s) implemented by the rulemaking: Iowa Code chapter 169

Public Hearing

A public hearing at which persons may present their views orally or in writing will be held as follows:

November 13, 2023
9 a.m.

Second Floor Conference Room
Wallace State Office Building
Des Moines, Iowa

Public Comment

Any interested person may submit written comments concerning this Regulatory Analysis. Written comments in response to this Regulatory Analysis must be received by the Board of Veterinary Medicine no later than 4:30 p.m. on the date of the public hearing. Comments should be directed to:

Colin Tadlock
Iowa Department of Agriculture and Land Stewardship
Wallace State Office Building
502 East 9th Street
Des Moines, Iowa 50319
Email: colin.tadlock@iowaagriculture.gov

Purpose and Summary

This proposed chapter provides for the Board to deny an applicant’s request for a license or suspend or revoke an existing license for a licensee’s failure to pay child support or taxes.

Analysis of Impact

1. Persons affected by the proposed rulemaking:

- Classes of persons that will bear the costs of the proposed rulemaking:

Only applicants or licensees who are delinquent on either child support or taxes will bear the costs of the proposed rulemaking.

- Classes of persons that will benefit from the proposed rulemaking:

Children and ex-spouses or ex-partners of applicants or licensees who are delinquent on child support payments will benefit from the proposed rulemaking. The public will benefit from the delinquent tax rules since the rules require applicants or licensees to pay taxes owed in order to obtain or retain a license and be employed, which will also generate more revenue for the State to perform its essential services and eliminate the need to obtain those tax dollars elsewhere.

2. Impact of the proposed rulemaking, economic or otherwise, including the nature and amount of all the different kinds of costs that would be incurred:

- Quantitative description of impact:

There is little, if any, quantitative or qualitative impact of the proposed rules since the rules apply only to applicants or licensees who are delinquent on either child support or taxes.

- Qualitative description of impact:

There is little, if any, quantitative or qualitative impact of the proposed rules since the rules apply only to applicants or licensees who are delinquent on either child support or taxes.

3. Costs to the State:

- Implementation and enforcement costs borne by the agency or any other agency:

The costs would be limited to time spent by the Board and the Board's staff reviewing and enforcing referrals from Iowa's Child Support Recovery Unit and the Department of Revenue.

- Anticipated effect on state revenues:

The impact on state revenues would be minimal, if any, since the proposed rules may also increase state revenues by requiring an applicant or licensee to remedy delinquent taxes.

4. Comparison of the costs and benefits of the proposed rulemaking to the costs and benefits of inaction:

The costs are minimal, if any, and failure to have a process to deny a license or discipline an existing licensee for failing to pay child support or taxes would negatively impact children, ex-spouses or ex-partners, and the State by allowing persons to work in a profession while avoiding court-ordered and/or statutorily required payments.

5. Determination whether less costly methods or less intrusive methods exist for achieving the purpose of the proposed rulemaking:

There does not appear to be any less costly method because the process is specifically required and detailed in statute.

6. Alternative methods considered by the agency:

- Description of any alternative methods that were seriously considered by the agency:

There does not appear to be any less costly method because the process is specifically required and detailed in statute.

- Reasons why alternative methods were rejected in favor of the proposed rulemaking:

There does not appear to be any less costly method because the process is specifically required and detailed in statute.

Small Business Impact

If the rulemaking will have a substantial impact on small business, include a discussion of whether it would be feasible and practicable to do any of the following to reduce the impact of the rulemaking on small business:

- Establish less stringent compliance or reporting requirements in the rulemaking for small business.
- Establish less stringent schedules or deadlines in the rulemaking for compliance or reporting requirements for small business.
- Consolidate or simplify the rulemaking's compliance or reporting requirements for small business.
- Establish performance standards to replace design or operational standards in the rulemaking for small business.
- Exempt small business from any or all requirements of the rulemaking.

If legal and feasible, how does the rulemaking use a method discussed above to reduce the substantial impact on small business?

Only applicants or licensees who are delinquent on child support or taxes would bear any costs under these proposed rules, and there do not appear to be any additional impacts on small business where the licensee is delinquent on such court-ordered or statutorily required payments.

Text of Proposed Rulemaking

ITEM 1. Rescind 811—Chapter 13 and adopt the following **new** chapter in lieu thereof:

CHAPTER 13
COLLECTION PROCEDURES

811—13.1(169,252J,272D) Licensing actions. In addition to other reasons specified by statute or rule, the board will refuse to issue a credential or may revoke, suspend, or not renew any credential for which it has jurisdiction if the board is in receipt of a certificate of noncompliance from the child support recovery unit pursuant to the procedures set forth in Iowa Code chapter 252J or from the centralized collection unit of the department of revenue pursuant to the procedures set forth in Iowa Code chapter 272D.

An applicant or credential holder whose application is denied or whose credential is denied, suspended, or revoked because of receipt by the board of a certificate of noncompliance issued by the child support recovery unit or by the centralized collection unit of the department of revenue is subject to the provisions of rule 811—13.1(169,252J,272D). Procedures specified in 811—Chapter 10 for contesting board actions do not apply.

811—13.2(169,252J,272D) Collection procedures. The following procedures apply to actions taken by the board on a certificate of noncompliance pursuant to Iowa Code chapter 252J or 272D:

13.2(1) The notice mandated by Iowa Code section 252J.8 or 272D.8 will be served upon the applicant or credential holder by restricted certified mail, return receipt requested, or personal service in accordance with Iowa Rule of Civil Procedure 1.305. Alternatively, the applicant or credential holder may accept service personally or through authorized counsel.

13.2(2) The effective date of revocation or suspension of a credential or the denial of the issuance or renewal of a credential, as specified in the notice mandated by Iowa Code section 252J.8 or 272D.8, is 60 days following service of the notice upon the credential holder or applicant.

13.2(3) Applicants and credential holders shall keep the board informed of all court actions and all child support recovery unit actions taken under or in connection with Iowa Code chapter 252J or the centralized collection unit actions taken in connection with Iowa Code chapter 272D. Applicants and credential holders shall provide the board copies, within seven days of filing or issuance, of all applications filed with the district court pursuant to Iowa Code section 252J.9 or 272D.9, all court orders entered in such actions, and withdrawals of certificates of noncompliance by the child support recovery unit or by the centralized collection unit of the department of revenue.

13.2(4) All board fees for applications, credential renewals or reinstatements will be paid by the applicant or credential holder before a credential will be issued, renewed or reinstated after the board has denied the issuance or renewal of a credential or has suspended or revoked a credential pursuant to Iowa Code chapter 252J or 272D.

13.2(5) If an applicant or credential holder timely files a district court action following service of a board notice pursuant to Iowa Code sections 252J.8 and 252J.9 or Iowa Code sections 272D.8 and 272D.9, the board will continue with the intended action described in the notice upon receipt of a court order lifting the stay, dismissing the action, or otherwise directing the board to proceed. For the purpose of determining the effective date of revocation or suspension, or denial of the issuance or renewal of a credential, the board will count the number of days before the action was filed and the number of days after the action was disposed of by the court.

These rules are intended to implement Iowa Code chapters 169, 252J and 272D.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 811—Chapter 14
“Waiver of Rules”

Iowa Code section(s) or chapter(s) authorizing rulemaking: 169.5
State or federal law(s) implemented by the rulemaking: Iowa Code chapter 169

Public Hearing

A public hearing at which persons may present their views orally or in writing will be held as follows:

November 13, 2023
10 a.m.

Second Floor Conference Room
Wallace State Office Building
Des Moines, Iowa

Public Comment

Any interested person may submit written comments concerning this Regulatory Analysis. Written comments in response to this Regulatory Analysis must be received by the Board of Veterinary Medicine no later than 4:30 p.m. on the date of the public hearing. Comments should be directed to:

Colin Tadlock
Iowa Department of Agriculture and Land Stewardship
Wallace State Office Building
502 East 9th Street
Des Moines, Iowa 50319
Email: colin.tadlock@iowaagriculture.gov

Purpose and Summary

The proposed chapter provides the public with information about how to petition the Board for a waiver and provides an opportunity for the public to seek a waiver of a rule in certain circumstances where the rule may impose a hardship.

Analysis of Impact

1. Persons affected by the proposed rulemaking:

- Classes of persons that will bear the costs of the proposed rulemaking:

Only citizens or groups that seek to prepare and file a petition for waiver would bear any costs under this rulemaking, but the rulemaking itself may provide the requestor with relief, whether in cost, time, or resources, by waiver from a potential hardship under different Board rules.

- Classes of persons that will benefit from the proposed rulemaking:

The public and regulated community will benefit from the proposed rulemaking because it provides a specific process by which they can seek a waiver from the Board to prevent a potential hardship.

2. Impact of the proposed rulemaking, economic or otherwise, including the nature and amount of all the different kinds of costs that would be incurred:

- Quantitative description of impact:

There is little, if any, quantitative or qualitative impact from this proposed rulemaking because only citizens or groups that seek to prepare and file a petition for waiver would bear any costs under the rulemaking, and those costs would be limited to the time and resources necessary to draft a petition. In addition, the rulemaking itself provides an opportunity for persons to avoid a potential hardship that could impose additional costs or burdens on the requestor.

- Qualitative description of impact:

See prior answer.

3. Costs to the State:

- Implementation and enforcement costs borne by the agency or any other agency:

The costs would be limited to time spent by the Board and staff reviewing petition(s) for waiver, which are relatively minimal because there have been one to three petitions for waiver on average each year for the last several years.

- Anticipated effect on state revenues:

See prior answer.

4. Comparison of the costs and benefits of the proposed rulemaking to the costs and benefits of inaction:

Failure to have a specific process for petitioning for waiver could lead to increased costs or burdens to the Board and State as more staff time will be required to answer questions from the public and regulated community about how to petition the Board for waiver, which may also increase the costs or time required by the public or licensees to properly prepare a petition for declaratory orders. In addition, failure to have a process for seeking a waiver from the Board may result in a regulatory hardship being imposed on a person that could be avoided through the waiver process.

5. Determination whether less costly methods or less intrusive methods exist for achieving the purpose of the proposed rulemaking:

There does not appear to be any less costly method because the process for petitioning the Board for a waiver needs to be included in Chapter 14 to properly inform the public and regulated community about the process.

6. Alternative methods considered by the agency:

- Description of any alternative methods that were seriously considered by the agency:

No alternative methods were considered.

- Reasons why alternative methods were rejected in favor of the proposed rulemaking:

No alternative methods were considered for the reasons previously stated.

Small Business Impact

If the rulemaking will have a substantial impact on small business, include a discussion of whether it would be feasible and practicable to do any of the following to reduce the impact of the rulemaking on small business:

- Establish less stringent compliance or reporting requirements in the rulemaking for small business.
- Establish less stringent schedules or deadlines in the rulemaking for compliance or reporting requirements for small business.
- Consolidate or simplify the rulemaking's compliance or reporting requirements for small business.
- Establish performance standards to replace design or operational standards in the rulemaking for small business.
- Exempt small business from any or all requirements of the rulemaking.

If legal and feasible, how does the rulemaking use a method discussed above to reduce the substantial impact on small business?

Only citizens or groups that seek to prepare and file a petition for waiver would bear any costs under this rulemaking, and there does not appear to be any additional impacts on small businesses to prepare a petition. In addition, to the extent the Board's rules impose a specific burden on a small business, the

rulemaking itself provides for an opportunity for the small business to seek a waiver of the regulatory requirement in order to potentially avoid the burden.

Text of Proposed Rulemaking

ITEM 1. Rescind 811—Chapter 14 and adopt the following **new** chapter in lieu thereof:

CHAPTER 14
WAIVER OF RULES

811—14.1(17A,169) Definition. For purposes of this chapter, “waiver” means action by the board that suspends in whole or in part the requirements or provisions of a rule as applied to an identified person on the basis of the particular circumstances of that person.

811—14.2(17A,169) Scope of chapter. This chapter outlines generally applicable standards and a uniform process for the granting of individual waivers from rules adopted by the board in situations where no other more specifically applicable law provides for waivers. To the extent another more specific provision of law governs the issuance of a waiver from a particular rule, the more specific provision supersedes this chapter with respect to any waiver from that rule.

811—14.3(17A,169) Applicability. The board may grant a waiver from a rule only if the board is authorized to do so by Iowa Code section 17A.9A(1).

811—14.4(17A,169) Criteria for waiver. In response to a petition completed pursuant to rule 811—14.6(17A,169), the board may issue an order waiving in whole or in part the requirements of a rule in accordance with Iowa Code section 17A.9A(2) “a” through “d.”

811—14.5(17A,169) Filing of petition. A petition for a waiver will only be considered by the board if it is submitted in writing to the board as follows:

14.5(1) Credential application. If the petition relates to a credential application, the petition is made in accordance with the filing requirements for the credential in question.

14.5(2) Contested cases. If the petition relates to a pending contested case, the petition is filed in the contested case proceeding using the caption of the contested case.

14.5(3) Other. If the petition does not relate to a credential application or a pending contested case, the petition is submitted to the board’s secretary.

811—14.6(17A,169) Content of petition. A petition for waiver will only be considered by the board if it includes the following information where applicable and known to the requester:

1. The name, address, and telephone number of the entity or person for whom a waiver is being requested and the case number of any related contested case.

2. A description and citation of the specific rule from which a waiver is requested.

3. The specific waiver requested, including the precise scope and duration.

4. The relevant facts that the petitioner believes would justify a waiver under each of the four criteria described in rule 811—14.4(17A,169), a signed statement from the petitioner attesting to the accuracy of the facts provided in the petition, and a statement of reasons that the petitioner believes will justify a waiver.

5. A history of any prior contacts between the board and the petitioner relating to the regulated activity or credential affected by the proposed waiver, including a description of each affected credential held by the requester, any notices of violation, contested case hearings, or investigative reports relating to the regulated activity or credential within the last five years.

6. Any information known to the requester regarding the board’s treatment of similar cases.

7. The name, address, and telephone number of any public agency or political subdivision that also regulates the activity in question or that might be affected by the granting of a waiver.

8. The name, address, and telephone number of any person or entity that would be adversely affected by the granting of a petition.
9. The name, address, and telephone number of any person with knowledge of the relevant facts relating to the proposed waiver.
10. Signed releases of information authorizing persons with knowledge regarding the request to furnish the board with information relevant to the waiver.

811—14.7(17A,169) Additional information. Prior to issuing an order granting or denying a waiver, the board may request additional information from the petitioner relative to the petition and surrounding circumstances. If the petition was not filed in a contested case, the board may, on its own motion or at the petitioner's request, schedule a telephonic or in-person meeting between the petitioner and the board's executive secretary, a committee of the board, or a quorum of the board.

811—14.8(17A,169) Notice. The board will acknowledge a petition upon receipt. The board will ensure that, within 30 days of the receipt of the petition, notice of the pendency of the petition and a concise summary of its contents have been provided to all persons to whom notice is required by any provision of law. In addition, the board may give notice to other persons. To accomplish this notice provision, the board may require the petitioner to serve the notice on all persons to whom notice is necessary by any provision of law and provide a written statement to the board attesting that notice has been provided.

811—14.9(17A,169) Hearing procedures. The provisions of Iowa Code sections 17A.10 through 17A.18A regarding contested case hearings apply to any petition for a waiver filed within a contested case and otherwise apply to agency proceedings for a waiver only when the board so provides by rule or order or is mandated to do so by statute.

811—14.10(17A,169) Ruling. An order granting or denying a waiver will be in writing and contain a reference to the particular person and rule or portion thereof to which the order pertains, a statement of the relevant facts and reasons upon which the action is based, and a description of the precise scope and duration of the waiver if one is issued.

14.10(1) Time for ruling. The board will grant or deny a petition for a waiver as soon as practicable but, in any event, within 120 days of its receipt unless the petitioner agrees to a later date. However, if a petition is filed in a contested case, the board will grant or deny the petition no later than the time at which the final decision in that contested case is issued.

14.10(2) When deemed denied. Failure of the board to grant or deny a petition within the applicable time period is deemed a denial of that petition by the board. However, the board remains responsible for issuing an order denying a waiver.

14.10(3) Service of order. Within seven days of its issuance, any order issued under this chapter will be transmitted to the petitioner or the person to whom the order pertains and to any other person entitled to such notice by any provision of law.

811—14.11(17A,169) Public availability. All orders granting or denying a waiver petition will be indexed, filed, and available for public inspection as provided in Iowa Code section 17A.3. Petitions for a waiver and orders granting or denying a waiver petition are public records under Iowa Code chapter 22. Some petitions or orders may contain information the board is authorized or needs to keep confidential. The board may accordingly redact confidential information from petitions or orders prior to public inspection.

811—14.12(17A,169) Submission of waiver information. Within 60 days of granting or denying a waiver, the board will make a submission on the Internet site established pursuant to Iowa Code section 17A.9A(4) for the submission of waiver information.

811—14.13(17A,169) Cancellation of a waiver. A waiver issued by the board pursuant to this chapter may be withdrawn, canceled, or modified if, after appropriate notice and hearing, the board issues an order finding any of the following:

1. The petitioner or the person who was the subject of the waiver order withheld or misrepresented material facts relevant to the propriety or desirability of the waiver;
2. The alternative means for ensuring that the public health, safety, and welfare will be adequately protected after issuance of the waiver order have been demonstrated to be insufficient; or
3. The subject of the waiver order has failed to comply with all conditions contained in the order.

811—14.14(17A,169) Violations. Violation of a condition in a waiver order is treated as a violation of the particular rule for which the waiver was granted. As a result, the recipient of a waiver under this chapter who violates a condition of the waiver may be subject to the same remedies or penalties as a person who violates the rule at issue.

811—14.15(17A,169) Defense. After the board issues an order granting a waiver, the order is a defense within its terms and the specific facts indicated therein for the person to whom the order pertains in any proceeding in which the rule in question is sought to be invoked.

811—14.16(17A,169) Judicial review. Judicial review of a board's decision to grant or deny a waiver petition may be taken in accordance with Iowa Code chapter 17A.

These rules are intended to implement Iowa Code section 17A.9A and chapter 169.

REVENUE DEPARTMENT[701]

Order 2023-02, Certifying Iowa Corporate Income Tax Rates for 2024 under Iowa Code section 422.33(1)“b”

I. Certification of Iowa Corporate Income Tax Rates for Tax Years Beginning On or After January 1, 2024.

On March 1, 2022, Governor Reynolds signed House File 2317. Division IX of the bill contains a provision outlining a possible reduction in corporate income tax rates if a certain threshold is met. If the Department of Management determines that net corporate income tax receipts exceeded \$700 million for the immediately preceding fiscal year, the Department of Revenue will calculate what corporate income tax rates would have generated \$700 million in net corporate income tax receipts in that fiscal year. Those rates will then apply to tax years beginning on or after the next January 1. This process will continue until the corporate income tax rate is 5.5% for all corporate taxable income. All rates as determined by the Department of Revenue must be rounded down to the nearest 1/10th of 1 percent.

On September 20, 2023, the Department of Management determined that the net corporate income tax receipts for fiscal year 2023 were \$838,064,990.88. The Department of Revenue has determined that the top two Iowa corporate income tax rates should each be reduced to 7.1%. The Iowa corporate income tax rates for tax years beginning on or after January 1, 2024, are as follows:

Bracket	Tax Rate
\$0-\$25,000	5.5%
\$25,001-\$100,000	5.5%
\$100,001-\$250,000	7.1%
> \$250,000	7.1%

The Director hereby certifies that the rates described above are correctly computed as required by Iowa Code section 422.33(1)(b) and shall apply for tax years beginning on or after January 1, 2024.

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REVENUE DEPARTMENT[701]

Notice of Intended Action

Proposing rulemaking related to settlement authority and providing an opportunity for public comment

The Revenue Department hereby proposes to rescind Chapter 3, “Voluntary Disclosure Program”; to amend Chapter 7, “Appeals, Taxpayer Representation, and Other Administrative Procedures,” and Chapter 10, “Interest, Penalty, Exceptions to Penalty, and Jeopardy Assessments”; to adopt Chapter 19, “Settlements—Compromises and Abatements of Tax, Penalty, and Interest”; to amend Chapter 101, “Replacement Tax and Statewide Property Tax,” Chapter 108, “Replacement Tax and Statewide Property Tax on Rate-Regulated Water Utilities,” Chapter 254, “Administration,” Chapter 300, “Administration,” Chapter 305, “Assessments and Refunds,” Chapter 504, “Assessments, Refunds, Appeals,” Chapter 603, “Assessments, Refunds, Appeals,” Chapter 700, “Fiduciary Income Tax,” and Chapter 900, “Inheritance Tax,” Iowa Administrative Code.

Legal Authority for Rulemaking

This rulemaking is proposed under the authority provided in Iowa Code sections 421.5 and 421.14.

State or Federal Law Implemented

REVENUE DEPARTMENT[701](cont'd)

This rulemaking implements, in whole or in part, Iowa Code sections 17A.10, 421.5, 422.25(3), 422.28, 423.47, 450.94 and 452A.65.

Purpose and Summary

The purpose of the proposed rulemaking is to implement division VI of 2023 Iowa Acts, Senate File 565. Division VI amends several Iowa Code sections related to settlement authority, including the authority to fully abate liabilities under certain circumstances. The Act also establishes new procedures related to estimated assessments. The statutory changes related to settlement authority in Iowa Code section 421.5 include a requirement that the Department adopt rules to administer the section. A new chapter is proposed to cover the various types of settlements that the Department may enter into. The proposed chapter defines key terms of the statute and describes procedures related to different types of settlements. The settlement authority is very discretionary. Adopting rules on this authority will provide taxpayers with information on the required procedures and limitations.

The sections of the Act related to estimated assessments did not include mandatory rulemaking authority. The Department did not find it necessary to propose any new rules on the estimated assessment provisions of the statute at this time but did find that several rules that would otherwise need to be amended could instead be rescinded because they largely repeated the statute. One relevant rule, 701—700.11(422), is proposed to be amended and significantly shortened as a result of the changes to ensure accuracy.

Fiscal Impact

This rulemaking has no fiscal impact beyond that of the legislation it is intended to implement.

Jobs Impact

After analysis and review of this rulemaking, no impact on jobs has been found.

Waivers

Any person who believes that the application of the discretionary provisions of this rulemaking would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any, pursuant to rule 701—7.28(17A).

Public Comment

Any interested person may submit written or oral comments concerning this proposed rulemaking. Written or oral comments in response to this rulemaking must be received by the Department no later than 4:30 p.m. on November 7, 2023. Comments should be directed to:

Alana Stamas
Department of Revenue
Hoover State Office Building
P.O. Box 10457
Des Moines, Iowa 50306-3457
Phone: 515.350.3932
Email: alana.stamas@iowa.gov

Public Hearing

If requested, a public hearing at which persons may present their views orally or in writing will be held as follows:

November 8, 2023
1 to 2 p.m.

Via video/conference call

REVENUE DEPARTMENT[701](cont'd)

Persons who wish to participate in the video/conference call should contact Alana Stamas before 4:30 p.m. on November 7, 2023, to facilitate an orderly hearing. A video link and conference call number will be provided to participants prior to the hearing.

Persons who wish to make oral comments at the public hearing may be asked to state their names for the record and to confine their remarks to the subject of this proposed rulemaking.

Any persons who intend to attend the public hearing and have special requirements, such as those related to hearing or mobility impairments, should contact the Department and advise of specific needs.

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rulemaking by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rulemaking at its [regular monthly meeting](#) or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

The following rulemaking action is proposed:

ITEM 1. Rescind and reserve **701—Chapter 3**.

ITEM 2. Amend subrule 7.11(5) as follows:

7.11(5) Settlements. Settlement proposals may be submitted to the department employee assigned to the appeal or through GovConnectIowa using the manage appeal feature. Only the director, the deputy director, or the division administrator of the legal services and appeals division may approve and sign settlements of appeals. If a settlement is reached during informal procedures, a closing order stating that a settlement was reached by the parties and that the case is terminated shall be issued by the director and provided to all parties.

ITEM 3. Amend rule 701—7.11(17A), parenthetical implementation statute, as follows:

701—7.11(17A,421) Informal stage of the appeals process.

ITEM 4. Amend rule **701—7.11(17A)**, implementation sentence, as follows:

This rule is intended to implement Iowa Code ~~section~~ sections 17A.10 and 421.5.

ITEM 5. Rescind and reserve rule **701—7.31(421)**.

ITEM 6. Amend subrule 10.3(2) as follows:

10.3(2) Interest on unpaid tax. Interest due on unpaid tax is not a penalty, but rather it is compensation to the government for the period the government was deprived of the use of money. ~~Therefore, interest~~ Interest due cannot be waived except in accordance with the settlement authority described in Iowa Code sections 421.5 and 17A.10. *Vick v. Phinney*, 414 F.2d 444, 448 (5th CA 1969); *Time, Inc. v. United States*, 226 F.Supp. 680, 686 (S.D. N.Y. 1964); *In Re Jeffco Power Systems, Dep't of Revenue Hearing Officer decision*, Docket No. 77-9-6A-A (1978); *Waterloo Courier, Inc. v. Iowa Department of Revenue and Finance*, Case No. LACV081252, Black Hawk County District Court, December 30, 1999.

ITEM 7. Amend rule 701—10.3(422,423,450,452A), parenthetical implementation statute, as follows:

701—10.3(421,422,423,450,452A) Interest on refunds and unpaid tax.

ITEM 8. Amend rule **701—10.3(422,423,450,452A)**, implementation sentence, as follows:

This rule is intended to implement Iowa Code sections 421.5, 422.25(3), 422.28, 423.47, 450.94 and 452A.65.

REVENUE DEPARTMENT[701](cont'd)

ITEM 9. Adopt the following **new** 701—Chapter 19:

CHAPTER 19

SETTLEMENTS—COMPROMISES AND ABATEMENTS OF TAX, PENALTY, OR INTEREST

701—19.1(421) Settlements. Pursuant to Iowa Code section 421.5, in addition to the authority granted to the department pursuant to Iowa Code section 17A.10 and notwithstanding Iowa Code section 7D.9, the department may, in its sole discretion, settle any taxes, penalties, or interest. A settlement may be a compromise or full abatement of any amount in dispute.

701—19.2(421) Amounts qualifying for settlement. To be eligible for settlement under Iowa Code section 421.5, the amount must be of doubtful liability or doubtful collectability or must cause severe economic hardship, or the settlement of the amount must promote effective tax administration. The decision whether to accept a settlement amount will be based on a taxpayer's facts and circumstances; verifiable documentation is required for all grounds.

19.2(1) *Doubtful collectability.* Doubt as to collectability may exist in any case where the taxpayer's assets and discretionary income may not satisfy the full amount of the liability after satisfying senior priority liabilities. An offer to settle based on doubt as to collectability may be considered acceptable if it is unlikely that the tax, penalty, and interest can be collected in full and the offer reasonably reflects the amount the department could collect through other means, including administrative and judicial collection remedies. This amount is the reasonable collection potential of a case. In determining the reasonable collection potential of a case, the department will take into account the taxpayer's verifiable reasonable basic living expenses. In some cases, the department may accept an offer of less than the reasonable collection potential of a case if there are special circumstances.

19.2(2) *Severe economic hardship.* The department may settle where it determines that, although collection in full could be achieved, collection of the full amount would cause the taxpayer severe economic hardship. Severe economic hardship is defined as the inability to pay reasonable basic living expenses. An offer to settle based on economic hardship may be considered acceptable when, even though the tax, penalty, and interest could be collected in full, the amount offered reflects the amount the department can collect without causing the taxpayer severe economic hardship.

19.2(3) *Doubtful liability.* A doubtful liability may exist where there is a significant doubt as to the existence or amount of the correct tax liability under the law. A doubtful liability does not exist where the liability has been established by a final court judgment or administrative ruling or final order of the department concerning the existence or amount of the liability. An offer to settle a doubtful liability may be considered acceptable if it reasonably reflects the likelihood the department could expect to collect through litigation. This analysis may include consideration of the hazards and costs of litigation that would be involved if the liability were litigated. The evaluation of the hazards and costs of litigation is not an exact science and is within the discretion of the department.

19.2(4) *Promote effective tax administration.* The department may settle to promote effective tax administration where compelling public policy or equity considerations identified by the taxpayer provide a sufficient basis for settling the liability that is equitable under the particular facts and circumstances of the case. Settlements pursuant to this subrule may be justified only where, due to exceptional circumstances, collection of the full liability may undermine public confidence that the tax laws are being administered in a fair and equitable manner. The taxpayer will be expected to demonstrate circumstances that justify settlement even though a similarly situated taxpayer may have paid the liability in full. The department may settle cases where doing so will promote voluntary compliance with the law. The department may decline a settlement for reasons promoting effective tax administration if the settlement of the liability would undermine compliance by taxpayers with the tax laws.

701—19.3(421) Settlement procedures and limitations, generally.

REVENUE DEPARTMENT[701](cont'd)

19.3(1) *Whether to seek a settlement.* When determining whether to seek a settlement, a taxpayer should first consider whether a settlement is necessary. Nothing in this chapter is intended to preclude a taxpayer who misses the time provided by law to appeal a notice of assessment from paying the amount due, filing a refund claim, and contesting any denial of that refund claim as described in Iowa Code section 421.60(2) “h.” If a taxpayer has not received a billing but has information that would adjust the liability down, the appropriate remedy is to file an amended return within the statute of limitations. If a taxpayer has received an estimated assessment and is within three years of when the assessment was issued, the taxpayer should file a return. If a taxpayer has received an assessment and is within the time period to file an appeal, it is proper to file an appeal rather than a settlement request. If a taxpayer does not dispute the liability, but is unable to pay the liability due to financial hardship, the taxpayer should submit an offer in compromise application.

19.3(2) *Which type of settlement to seek.* Different types of settlements require different forms and procedures. Procedures for abatement, offer in compromise, and voluntary disclosure agreements are described in specific rules below. For matters currently under appeal pursuant to 701—Chapter 7, settlement requests must be submitted to the appeals section of the legal services and appeals division in accordance with 701—subrule 7.11(5). For matters currently under audit, settlement requests must be submitted to the department employee assigned to the audit.

19.3(3) *Who may authorize a department settlement.* Only the director, the deputy director, or the division administrator of the legal services and appeals division may approve and sign settlements under this chapter unless otherwise specified in rule or designated by the director.

19.3(4) *Discretionary nature of settlements.* There is no right to appeal an abatement denial, offer in compromise denial, or other settlement decision by the department under 701—Chapter 7. As described in Iowa Code section 421.5, a taxpayer shall not have the right to a settlement of any tax, penalty, or interest liability under this chapter or Iowa Code section 421.5. Any determination shall be discretionary and shall be final and conclusive except in the case of fraud or mutual mistake of material fact or as otherwise stated in a written settlement agreement between the taxpayer and the department.

701—19.4(421) Applications for abatement.

19.4(1) *When to file.* Abatement is intended to be a possible remedy for taxpayers who have received a billing or refund denial letter and have information that could lead to a reduction in the liability, but failed to file a timely appeal. Grounds for abatement include doubt as to liability and promoting effective tax administration.

19.4(2) *How to file an application.* To apply, a taxpayer must submit an application for abatement in the department’s prescribed paper or electronic format. The application can be submitted through GovConnectIowa or by using the form available on the department’s website and following the submission instructions on the form.

19.4(3) *Required information.* A request for abatement must be submitted on the department’s form. The form must be fully completed and properly signed.

19.4(4) *Review of requests.*

- a. After the application has been submitted, it will be reviewed by department staff.
- b. Additional information may be requested to assist the department in its review.
- c. A letter will be issued to the applicant notifying the applicant of the decision to grant, deny or partially grant the abatement request. The department’s decision on an abatement application will only be contained in a formal determination letter.
- d. Applicants whose applications are granted in part will receive an agreement describing the terms of the partially granted abatement request and must sign and return that agreement to the department in order to receive the partially granted abatement.
- e. Decisions to accept an abatement request in full or in part for doubt as to liability may be approved by the bureau chief of the compliance section of the tax management division or another staff member designated by the director.

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f. Decisions to accept an abatement request to promote effective tax administration may only be approved by the director, the deputy director, or the division administrator of the legal services and appeals division.

19.4(5) Limitations. The department will accept applications for abatement during the appeal period but will not review such applications until the appeal period has passed. The department will generally not refund amounts already paid in response to an application for abatement. Some exceptions may include the following circumstances:

a. The application is received within three years after the return related to the application for abatement was due or within one year after the payment related to the application for abatement was made, whichever is later.

b. The application is received within one year of the final determination date of any final federal adjustment arising from an internal revenue service audit or other similar action by the internal review service with respect to the particular tax year at issue in the application.

c. Payments were received in violation of Title 11 of the United States Code.

d. Exceptional circumstances demonstrate that a refund would promote effective tax administration as described in subrule 19.2(4).

701—19.5(421) Offers in compromise.

19.5(1) When to file. An offer in compromise packet should be used to apply for relief based on doubtful collectability or severe economic hardship.

19.5(2) How to submit a packet. To apply, a taxpayer must submit an offer in compromise packet in the department's prescribed paper or electronic format. An offer in compromise packet can be submitted through GovConnectIowa or by using the form available on the department's website and following the submission instructions on the form.

19.5(3) Required information. An offer in compromise must be submitted using the department's offer in compromise packet.

19.5(4) Review of requests.

a. After the packet has been submitted, it will be reviewed by department staff.

b. Additional information may be requested to assist the department in its review.

c. A letter will be issued to the applicant notifying the applicant of the decision to grant, deny or partially grant the offer in compromise request. The department's decision on an offer in compromise request will only be contained in a formal determination letter.

d. Applicants whose applications are granted in part will receive an agreement describing the terms of the partially granted offer in compromise request and must sign and return that agreement to the department in order to receive the partially granted offer in compromise.

e. Decisions to enter into an offer in compromise must be approved by the bureau chief of the central collections unit, the director, the deputy director, the division administrator of the legal services and appeals division, or another staff member designated by the director.

19.5(5) Limitations. The department will not review offer in compromise applications until a liability is at least one year old. Premature applications will be denied. Denial on this basis does not prevent the taxpayer from reapplying at a later date.

701—19.6(421) Voluntary disclosure agreements.

19.6(1) When to file. Any person who is subject to Iowa tax or tax collection responsibilities may be eligible for the voluntary disclosure program. Being subject to Iowa tax may occur when a person has Iowa source income, business activities, or representatives or other presence in Iowa. Certain activities by such persons may create Iowa tax return filing requirements for Iowa source income. In addition, activities may also result in tax liabilities that are past due and owing.

19.6(2) Purpose of the voluntary disclosure program. The purpose of the voluntary disclosure program is to promote effective tax administration through voluntary compliance by encouraging unregistered business entities and persons to voluntarily contact the department regarding unreported Iowa source income or other Iowa taxes described in subrule 19.6(4).

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19.6(3) *Anonymity.* A person or the person's representative may initially contact the department on an anonymous basis. Anonymity of the taxpayer can be maintained until the voluntary disclosure agreement is executed by the taxpayer and the department. The voluntary disclosure program may be used by the department and the taxpayer to report previous periods of Iowa source income and to settle outstanding tax, penalty and interest liabilities, but it must also ensure future tax compliance by the taxpayer.

19.6(4) *Type of taxes eligible.* Only taxes, penalties, and interest related to the following tax types are eligible for settlement under the voluntary disclosure program: corporate income tax, franchise tax, fiduciary income tax, withholding income tax, individual income tax, composite return tax, local option school district income surtax, state sales tax, state use tax, fuel taxes, cigarette and tobacco taxes, local option tax, state and local hotel and motel taxes, automobile rental excise tax, equipment excise tax, water service excise tax, and the prepaid wireless 911 surcharge.

19.6(5) *Eligibility of the taxpayer.* The department has discretion to determine who is eligible for participation in the voluntary disclosure program. In making the determination, the department may consider the following factors:

- a. The person must be subject to Iowa tax on Iowa source income or have Iowa tax collection responsibilities;
- b. The person must have tax due;
- c. The person must not currently be under audit or examination by the department or under criminal investigation by the department;
- d. The person must not have had any prior contact with the department or a representative of the department that could lead to audit or assessment associated with the tax types or tax periods sought to be addressed under the program;
- e. The type and extent of activities resulting in Iowa source income;
- f. Failure to report the Iowa source income or pay any liability was not due to fraud, intentional misrepresentation, an intent to evade tax, or willful disregard of Iowa tax laws; and
- g. Any other factors which are relevant to the particular situation.

19.6(6) *How to file an application.*

a. *Required format.* To apply, a taxpayer must submit an application in the department's prescribed paper or electronic format. A voluntary disclosure application can be submitted through GovConnectIowa or by using the form available on the department's website and following the submission instructions on the form.

b. *Required information.* A voluntary disclosure application must be submitted using the department's form.

c. *Review of the application.*

- (1) After the application is submitted, it will be reviewed by department staff.
- (2) Additional information may be requested to assist the department in its review.
- (3) The department will notify an applicant in writing regarding whether the applicant's application for participation in the program is accepted or rejected.

19.6(7) *Terms of the voluntary disclosure agreement.*

a. *Discretion.* The department has the discretion to settle any outstanding Iowa tax, penalty, and interest liabilities of the eligible applicant. Settlement terms are on a case-by-case basis. Items considered by the department in determining the settlement terms include: the type of tax, the tax periods at issue, the reason for noncompliance, whether the tax is deemed to be held in trust for the state of Iowa, the types of activities resulting in the tax, the frequency of the activities that resulted in the tax, and any other matters which are relevant to the particular situation.

b. *Maximum scope of audit.* If a taxpayer initiates the contact with the department and is eligible for the voluntary disclosure program and complies with the agreement terms, the maximum prior years for which the department will generally audit and pursue settlement and collection will be five years, absent an intent to defraud, the making of material misrepresentations of fact, or an intent to evade tax.

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c. Future filing requirements. All voluntary disclosure agreements must require that the applicant file future Iowa tax returns, unless the activity by the applicant resulting in the Iowa source income has changed or there has been a change in the law, rules, or court cases that dictate a different result.

d. Audit and assessment rights. The department reserves the right to audit all returns and other documents submitted by the applicant or a third party to verify the facts and whether the terms of the voluntary disclosure agreement have been met. The department may audit information submitted by the applicant at any time within the allowed statutory limitation period. The department may also assess any tax, penalty, and interest found to be due in addition to the amount of original tax reported. The statute of limitations for assessment and statute of limitations for refunds begin to run as provided by law.

19.6(8) Commencement of the voluntary disclosure agreement. The voluntary agreement commences on the date the voluntary disclosure agreement is fully executed by all parties or another date specified by the agreement. Execution of the agreement is complete when the agreement is executed by the taxpayer or taxpayers and the bureau chief of the compliance section of the tax management division or another staff member designated by the director. Prior to the execution of the voluntary disclosure agreement by the taxpayer and the department, the taxpayer is not protected from the department's regular audit process if the identity of the taxpayer, as an applicant, is unknown to the department. However, if the department has knowledge of the taxpayer's identity, as an applicant, the department will not take audit action against the taxpayer during the voluntary disclosure process. If a voluntary disclosure agreement is not reached, the department may assess tax, penalty, and interest as provided by law at the time the identity of the applicant becomes known to the department.

19.6(9) Voiding a voluntary disclosure agreement.

a. Authority. The department has the authority to declare a voluntary disclosure agreement null and void subsequent to the execution of the agreement. The department may void the contractual agreement if the department determines that a misrepresentation of a material fact was made by the person or a third party representing the person to the department. The department may also void a voluntary disclosure agreement if the department determines any of the following has occurred:

- (1) The person does not submit information requested by the department within the time period specified by the department, including any extensions granted by the department;
- (2) The person fails to file future Iowa returns as agreed to in the voluntary disclosure agreement;
- (3) The person does not pay the agreed settlement liability within the time period designated by the department, including any extensions of time that may be granted by the department;
- (4) The person does not remit all taxes imposed upon or collected by the person for all subsequent tax periods and all tax types that are subject to the voluntary disclosure agreement;
- (5) The person fails to prospectively comply with Iowa tax law. Whether the person has failed to prospectively comply with Iowa tax law is determined by the department on a case-by-case basis;
- (6) The person, based on a determination by the department, materially understates the person's tax liability; or
- (7) The person has made a material breach of the terms of the voluntary disclosure agreement.

b. Audit rights. Voiding of the agreement results in nonenforceability of the agreement by the applicant and allows the department to proceed to assess tax, penalty, and interest for that person's Iowa tax and tax collection responsibilities for all periods within the statute of limitations. If the applicant is justifiably rejected for the voluntary disclosure program or the agreement between the person and the department is declared by the department to be null and void, the department reserves the right to audit all returns or other documents submitted by the applicant or a third party on behalf of the applicant and to make an assessment for all tax, penalty, and interest owed. If the voluntary disclosure agreement is voided or the application for the program is rejected and the department issues an assessment, the taxpayer may appeal the assessment pursuant to 701—Chapter 7. If the department does not issue an assessment, but does reject the application or voids the agreement, such action is not subject to appeal under 701—Chapter 7 but is considered to be "other agency action."

19.6(10) Partnerships, partners, S corporations, shareholders in S corporations, trusts, and trust beneficiaries. Once the department has initiated an audit or investigation of any type of partnership, partners of the partnership, S corporations, a shareholder in an S corporation, a trust, or trust beneficiaries,

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the department is deemed to have initiated an audit or investigation of the entity and of all those who receive Iowa source income from or have an interest in such an entity for purposes of eligibility for participation in the voluntary disclosure program.

19.6(11) *Transfer or assignment.* The terms of the voluntary disclosure agreement are valid and enforceable by and against all parties, including their transferees and assignees.

These rules are intended to implement Iowa Code sections 421.5 and 421.17.

ITEM 10. Amend rule 701—101.8(437A) as follows:

701—101.8(437A) Abatement of tax. The abatement provisions of rule 701—7.31(421) 701—Chapter 19 are applicable to replacement tax. In the event that the taxpayer files a request for abatement ~~with the director~~, the appropriate county treasurer shall be notified. ~~The director's department's~~ decision on the abatement request shall be sent to the taxpayer and the appropriate county treasurer.

ITEM 11. Amend rule 701—101.21(437A) as follows:

701—101.21(437A) Abatement of tax. The abatement provisions of rule 701—7.31(421) 701—Chapter 19 are applicable to the statewide property tax.

ITEM 12. Amend rule 701—108.8(437B) as follows:

701—108.8(437B) Abatement of tax. The abatement provisions of rule 701—7.31(421) 701—Chapter 19 are applicable to replacement tax. In the event that the taxpayer files a request for abatement with the ~~director~~ department, the appropriate county treasurer shall be notified. ~~The director's department's~~ decision on the abatement request shall be sent to the taxpayer and the appropriate county treasurer.

ITEM 13. Amend rule 701—108.20(437B) as follows:

701—108.20(437B) Abatement of tax. The abatement provisions of rule 701—7.31(421) 701—Chapter 19 are applicable to the statewide property tax.

ITEM 14. Rescind and reserve rule **701—254.11(453A).**

ITEM 15. Rescind and reserve rule **701—300.11(422).**

ITEM 16. Rescind and reserve rule **701—305.5(422).**

ITEM 17. Rescind and reserve rule **701—504.4(421).**

ITEM 18. Rescind and reserve rule **701—504.5(422).**

ITEM 19. Rescind and reserve rule **701—603.4(421).**

ITEM 20. Rescind and reserve rule **701—603.5(422).**

ITEM 21. Amend rule 701—700.11(422) as follows:

701—700.11(422) Appeals to the director. ~~An estate or trust has the right to appeal to the director for a revision of an assessment for additional tax due, the denial or reduction of a claim for refund, the denial of a request for a waiver of a penalty and the~~ The denial of a request for an income tax certificate of acquittance may be appealed. ~~The beneficiary of an estate or trust has the right to appeal a determination of the correct amount of income distributed and a determination of the correct allocation of deductions, credits, losses and expenses between the estate or trust and the beneficiary. The personal representative of an estate and the trustee of a trust have the right to appeal a determination of personal liability for income taxes required to be paid or withheld and for a penalty personally assessed. An appeal to the director must be in writing and must be made within 60 days of the notice of assessment and the other matters which are subject to appeal or for assessments issued on or after January 1, 1995, if the beneficiary of an estate or trust, the personal representative of an estate, or the trustee of a trust fails to timely appeal a notice of assessment, the person may pay the entire assessment and file a refund claim within the period~~

REVENUE DEPARTMENT[701](cont'd)

~~provided by law for filing such claims denial. 701—Chapter 7 shall govern appeals to the director. See specifically rules 701—7.8(17A) to 701—7.22(17A) governing taxpayer protests.~~

This rule is intended to implement Iowa Code chapter 17A and sections 421.60 and 422.28.

ITEM 22. Rescind and reserve rule **701—900.4(450)**.

ITEM 23. Amend subrule 900.8(18) as follows:

900.8(18) Appeals. ~~Rule 701—86.4(450)~~ 701—Chapter 7 providing for an appeal to the director and a subsequent appeal to district court under the Iowa administrative procedure Act for disputes involving the inheritance tax imposed by Iowa Code chapter 450 shall also be the rule for appeal for disputes concerning special use valuation and the additional inheritance tax imposed by Iowa Code chapter 450B.

ITEM 24. Amend subparagraph **900.9(2)“f”(1)** as follows:

(1) Real estate. If the department, the estate and the persons succeeding to the decedent's property have not reached an agreement as to the value of real estate under 86.9(2)“e,” the market value for inheritance tax purposes will be established by the appraisal proceedings specified in Iowa Code sections 450.27 to 450.36. For the purposes of appraisal, “real estate or real property” means the land and appurtenances, including structures affixed thereto. Use of the inheritance tax appraisers to determine value for other purposes such as, but not limited to, determining the share of the surviving spouse in the estate or for determining the fair market value of real estate for the purposes of sale, is not controlling in determining values for inheritance tax purposes. *In re Estate of Giffen*, 166 N.W.2d 800 (Iowa 1969); *In re Estate of Lorimor*, 216 N.W.2d 349 (Iowa 1974). Appraisals of real estate must be made in fee simple including land, all appurtenances and structures affixed to the real estate. Discounts in the value of real estate are not to be considered in the valuation of real property for the purposes of an appraisal. Such discounts in valuation are to be resolved by mutual agreement through informal procedures between the personal representative of the estate and the department. If an agreement between the personal representative of the estate and the department cannot be obtained, then the valuation placed on the property by the department may be appealed by the personal representative of the estate pursuant to the procedures set forth in ~~rule 701—86.4(450)~~ 701—Chapter 7. If either the department or the estate does not agree with the results of an appraisal that is conducted pursuant to Iowa Code sections 450.27 through 450.36, either the department or the estate may file an objection to the appraisal pursuant to Iowa Code section 450.31. ~~See 701—subrule 86.9(2) for Information on~~ additional factors to assist in the determination of fair market value of real property ~~can be found in 701—subrule 86.9(2).~~

TREASURER OF STATE

Notice—Public Funds Interest Rates

In compliance with Iowa Code chapter 74A and section 12C.6, the committee composed of Treasurer of State Roby Smith, Superintendent of Credit Unions Katie Averill, Superintendent of Banking Jeff Plagge, and Auditor of State Rob Sand has established today the following rates of interest for public obligations and special assessments. The usury rate for October is 6.25%.

INTEREST RATES FOR PUBLIC OBLIGATIONS AND ASSESSMENTS

74A.2 Unpaid Warrants	Maximum 6.0%
74A.4 Special Assessments	Maximum 9.0%

RECOMMENDED Rates for Public Obligations (74A.3) and School District Warrants (74A.7). A rate equal to 75% of the Federal Reserve monthly published indices for U.S. Government securities of comparable maturities. All Financial Institutions as defined by Iowa Code section 12C.1 are eligible for public fund deposits as defined by Iowa Code section 12C.6A.

The rate of interest has been determined by a committee of the state of Iowa to be the minimum interest rate that shall be paid on public funds deposited in approved financial institutions. To be

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eligible to accept deposits of public funds of the state of Iowa, a financial institution shall demonstrate a commitment to serve the needs of the local community in which it is chartered to do business. These needs include credit services as well as deposit services. All such financial institutions are required to provide the committee with a written description of their commitment to provide credit services in the community. This statement is available for examination by citizens.

New official state interest rates, effective October 10, 2023, setting the minimums that may be paid by Iowa depositories on public funds are listed below.

TIME DEPOSITS

7-31 days	Minimum .05%
32-89 days	Minimum .05%
90-179 days	Minimum 1.85%
180-364 days	Minimum 1.50%
One year to 397 days	Minimum 1.80%
More than 397 days	Minimum 1.30%

These are minimum rates only. All time deposits are four-tenths of a percent below average rates. Public body treasurers and their depositories may negotiate a higher rate according to money market rates and conditions.

Inquiries may be sent to Roby Smith, Treasurer of State, State Capitol, Des Moines, Iowa 50319.

USURY

In accordance with the provisions of Iowa Code section 535.2, subsection 3, paragraph “a,” the Superintendent of Banking has determined that the maximum lawful rate of interest shall be:

November 1, 2022 — November 30, 2022	5.50%
December 1, 2022 — December 31, 2022	6.00%
January 1, 2023 — January 31, 2023	6.00%
February 1, 2023 — February 28, 2023	5.50%
March 1, 2023 — March 31, 2023	5.50%
April 1, 2023 — April 30, 2023	5.75%
May 1, 2023 — May 31, 2023	5.75%
June 1, 2023 — June 30, 2023	5.50%
July 1, 2023 — July 31, 2023	5.50%
August 1, 2023 — August 31, 2023	5.75%
September 1, 2023 — September 30, 2023	6.00%
October 1, 2023 — October 31, 2023	6.25%
November 1, 2023 — November 30, 2023	6.50%

ARC 7102C

REVENUE DEPARTMENT[701]

Adopted and Filed

Rulemaking related to capital gain deduction and farm tenancy income exclusion

The Revenue Department hereby amends Chapter 302, “Determination of Net Income,” Iowa Administrative Code.

Legal Authority for Rulemaking

This rulemaking is adopted under the authority provided in Iowa Code sections 421.14, 422.7(13), 422.7(14) and 422.68.

State or Federal Law Implemented

This rulemaking implements, in whole or in part, 2022 Iowa Acts, House File 2317.

Purpose and Summary

The purpose of this rulemaking is to implement the deductions for farm tenancy agreement income and farm capital gains enacted by 2022 Iowa Acts, House File 2317, divisions II and III. The legislation repealed the previous Iowa capital gain deduction for gains resulting from the sale of a business, the sale of real property used in a business, the sale of timber, and the sale of employer securities to an Iowa employee stock ownership plan. The legislation provided a capital gain deduction for taxpayers who have held real property used in a farming business for ten years and who have materially participated in a farming business for ten years. The legislation also provided an election for retired farmers and eligible individuals to elect to deduct capital gains from the sale of cattle or horses, breeding livestock, and real property used in a farming business or to deduct income from a farm tenancy agreement covering real property. These deductions are effective for tax years beginning on or after January 1, 2023. This rulemaking also rescinds and replaces the rule for capital gains according to the law prior to the legislation.

Public Comment and Changes to Rulemaking

Notice of Intended Action for this rulemaking was published in the Iowa Administrative Bulletin on July 26, 2023, as **ARC 7050C**. A public hearing was held on August 17, 2023, at 2 p.m. via video/conference call. Two attendees made comments. The Department also received a written public comment during the comment period.

In response to comments and further review, the Department made the following changes to the Notice:

1. Revised subrules 302.87(1) and 302.88(1) to include a definition of “disabled individual.”
2. Revised paragraph 302.87(2)“d” to clarify whose activities can be attributed to the taxpayer for material participation purposes.
3. Revised subparagraph 302.87(2)“e”(5) to clarify the example.
4. Revised subparagraph 302.87(2)“f”(2) to use “taxpayer” instead of “landlord” to be consistent with the language in the rest of the rule.
5. Revised subparagraph 302.87(2)“f”(4) to clarify that a taxpayer whose sole activity is participating in the Conservation Reserve Program does not meet the requirement of materially participating in a farming business. This clarification is consistent with the definition of “farming business” in Iowa Code section 422.7(13)“a”(1).
6. Revised subparagraph 302.87(3)“b”(1) to include a deadline by which the surviving spouse must make an election on behalf of a deceased retired farmer.
7. Revised subparagraph 302.87(3)“b”(2) to add an additional example and renumber the following examples.

REVENUE DEPARTMENT[701](cont'd)

8. Revised subparagraph 302.87(3)“b”(3) to clarify the due date by which the surviving spouse must make a disclaimer, to add an additional example, and to renumber the following examples.

9. Removed subparagraph 302.87(3)“b”(4) and included language in subparagraph 302.87(3)“b”(3) clarifying the surviving spouse’s ability to make an election after a disclaimer.

10. Revised subparagraph 302.87(3)“c”(1) to include a presumption that spouses who jointly own real property used in a farming business each have a 50 percent ownership interest in the real property.

11. Revised paragraph 302.87(4)“a” to clarify that a taxpayer who is not a retired farmer must be materially participating in a farming business for the ten years immediately preceding the sale.

12. Revised paragraph 302.87(4)“c” to clarify the circumstances under which an owner of a pass-through entity may claim the capital gain deduction.

13. Revised paragraph 302.87(4)“f” to clarify examples.

14. Revised subrules 302.87(5) and 302.87(6) to clarify the requirements to exclude net capital gains from the sale of breeding livestock, cattle, or horses.

15. Revised subrule 302.87(7) to clarify the applicable version of the Iowa Code and a rule.

16. Revised subrule 302.88(2) to clarify that the material participation of a spouse does not count when determining if a taxpayer is no longer materially participating to meet the definition of a retired farmer.

Adoption of Rulemaking

This rulemaking was adopted by the Department on September 29, 2023.

Fiscal Impact

This rulemaking has no known fiscal impact to the State of Iowa beyond that of the legislation it is intended to implement. The final Fiscal Note for 2022 Iowa Acts, House File 2317, found that division II is projected to reduce General Fund revenue by \$2.1 million for fiscal year 2024, \$2.0 million for fiscal year 2025, \$1.8 million for fiscal year 2026, \$1.5 million for fiscal year 2027, \$1.6 million for fiscal year 2028, and increasing each year at the rate of inflation for fiscal years beyond. The final Fiscal Note for 2022 Iowa Acts, House File 2317, found that division III is projected to reduce General Fund revenue by \$7.2 million for fiscal year 2024, \$6.9 million for fiscal year 2025, \$6.1 million for fiscal year 2026, \$5.4 million for fiscal year 2027, \$5.7 million for fiscal year 2028, and increasing each year at the rate of inflation for fiscal years beyond.

Jobs Impact

After analysis and review of this rulemaking, no impact on jobs has been found.

Waivers

Any person who believes that the application of the discretionary provisions of this rulemaking would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any, pursuant to rule 701—7.28(17A).

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rulemaking by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rulemaking at its [regular monthly meeting](#) or at a special meeting. The Committee’s meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

Effective Date

This rulemaking will become effective on November 22, 2023.

The following rulemaking action is adopted:

REVENUE DEPARTMENT[701](cont'd)

ITEM 1. Rescind and reserve rule **701—302.38(422)**.

ITEM 2. Adopt the following new rule 701—302.87(422):

701—302.87(422) Capital gain deduction for certain types of net capital gains. Information relating to the Iowa capital gain deduction available for tax years prior to January 1, 2023, can be found in prior versions of rule 701—302.38(422). Prior versions of the Iowa Administrative Code are located here: www.legis.iowa.gov/law/administrativeRules/agencies. For tax years beginning on or after January 1, 2023, net capital gains from the sale of real property used in a farming business and the sale of certain livestock described in subrules 302.87(5) and 302.87(6) may be excluded in the computation of net income for qualified individual taxpayers. To exclude qualifying capital gains, a taxpayer has to meet certain holding period and material participation requirements, unless otherwise indicated in this rule.

302.87(1) Definitions. Unless otherwise indicated in this rule or required by the context, all words and phrases used in this rule that are defined under Iowa Code section 422.7(13) shall have the same meaning as provided to them under that Iowa Code section.

“Disabled individual” means an individual who is receiving benefits as a result of retirement from employment or self-employment due to disability. In addition, a person is considered to be a disabled individual if the individual is determined to be disabled in accordance with criteria established by the Social Security Administration or other federal or state governmental agency.

302.87(2) Material participation. If the taxpayer has regular, continuous, and substantial involvement in the operations of a farming business that meets the criteria for material participation in an activity under Section 469(h) of the Internal Revenue Code and the federal tax regulations for material participation in 26 CFR Sections 1.469-5 and 1.469-5T for the applicable number of years required under Iowa law for the deduction, the taxpayer has met the material participation requirement. Section 469(h)(3) of the Internal Revenue Code does not apply when determining material participation for the purposes of this rule.

a. Work done in connection with an activity is not participation in the activity if the work is not of a type that is customarily done by an owner and one of the principal purposes for the performance of the work is to avoid the disallowance of any loss or credit from the activity.

b. Work done in an activity by an individual in the individual’s capacity as an investor is not material participation in the business or activity unless the investor is directly involved in the day-to-day management or operations of the activity or business. Investor-type activities include the study and review of financial statements or reports on operations of the activity, preparing or compiling summaries or analyses of finances or operations of the activity for the individual’s own use, and monitoring the finances or operations of the activity in a nonmanagerial capacity.

c. A highly relevant factor in material participation in a business is how regularly the taxpayer is present at the place where the principal operations of a business are conducted. In addition, a taxpayer is likely to have material participation in a business if the taxpayer performs all functions of the business. The fact that the taxpayer utilizes employees or contracts for services to perform daily functions in a business will not prevent the taxpayer from qualifying as materially participating in the business, but the services will not be attributed to the taxpayer.

d. In determining whether a particular taxpayer has material participation in a business, participation of the taxpayer’s spouse in a business must also be taken into account. Activity done by a taxpayer’s spouse is considered activity done by the taxpayer. The spouse’s participation in the business must be taken into account even if the spouse does not file a joint state return with the taxpayer or if the spouse has no ownership interest in the business. The activities of other family members, employees, independent contractors, vendors, laborers, or consultants are not attributed to the taxpayer to determine material participation.

e. Generally, an individual will be considered as materially participating in a tax year if the taxpayer satisfies or meets any of the following tests:

(1) The individual participates in the farming business for more than 500 hours in the taxable year.

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(2) The individual's participation in the farming business constitutes substantially all of the participation of all individuals in the business (including individuals who are not owners of interests in the business) for the tax year.

EXAMPLE: Taxpayer A is a teacher in a small town in southeast Iowa. Taxpayer A owns 20 acres of farmland. Taxpayer A grows various crops on this land and is the only one who works on the farm. In the summer of 2023, there was a drought killing most of Taxpayer A's crops so Taxpayer A spent only 80 hours in 2023 growing crops. Taxpayer A is deemed to have materially participated in the farming business in 2023.

(3) The individual participates in the farming business for more than 100 hours in the tax year, and no other individual (including individuals who are not owners of interests in the business) participates more in the business than the taxpayer during the tax year.

(4) The individual participates in two or more businesses, excluding rental businesses, in the tax year and participates for more than 500 hours in all of the businesses and more than 100 hours in each of the businesses, and the participation is not material participation within the meaning of one of the tests in subparagraphs 302.87(2) "e"(1) through (3), (5) and (6).

EXAMPLE: Taxpayer B is a full-time CPA. Taxpayer B owns a restaurant and a farm. In 2023, Taxpayer B spent 400 hours working on the farm and 150 hours at the restaurant, and other individuals spent more time in the business activity than Taxpayer B did. Taxpayer B is treated as a material participant in each of the businesses in 2023.

(5) The individual materially participated (determined without regard to this subparagraph) in a farming business for five of the ten years preceding the applicable tax year.

EXAMPLE: Taxpayer C is the co-owner of a farming business. Taxpayer C stopped farming in 2018 after 15 years of farming. Since Taxpayer C stopped farming, Taxpayer C has retained interest in the farming business. Taxpayer C is considered to be materially participating in the business in 2019, 2020, 2021, 2022, and 2023 because Taxpayer C materially participated in the farming business during five of the ten years immediately preceding 2019, 2020, 2021, 2022, and 2023.

(6) The individual participates in the business activity for more than 100 hours and, based on all the facts and circumstances, the individual participates on a regular, continuous, and substantial basis. Management activities of a taxpayer are not considered for purposes of determining if there was material participation if either of the following applies: any person other than the taxpayer is compensated for management services or any person provides more hours of management services than the taxpayer.

f. The following paragraphs provide additional information regarding material participation:

(1) Limited partners of a limited partnership. The limited partners will not be treated as materially participating in any activity of a limited partnership except in a situation where the limited partner would be treated as materially participating under the material participation tests in subparagraphs 302.87(2) "e"(1) or 302.87(2) "e"(5) above if the taxpayer were not a limited partner for the tax year.

(2) Cash farm lease. A taxpayer who rents out farmland on a cash basis is not materially participating in a farming business. The burden is on the taxpayer to show that the taxpayer materially participated in the farming business operated on the cash-rented farmland.

(3) Farmer landlord involved in crop-share arrangement. A farmer landlord is subject to self-employment tax on net income from a crop-share arrangement with a tenant. The landlord is considered to be materially participating with the tenant in the crop-share activity if the landlord satisfies one of the four following tests:

TEST 1: The landlord does any three of the following: (1) pays or is obligated to pay for at least half the direct costs of producing the crop; (2) furnishes at least half the tools, equipment, and livestock used in producing the crop; (3) consults with the tenant; and (4) inspects the production activities periodically.

TEST 2: The landlord regularly and frequently makes, or takes part in making, management decisions substantially contributing to or affecting the success of the enterprise.

TEST 3: The landlord worked 100 hours or more spread over a period of five weeks or more in activities connected with crop production.

TEST 4: The landlord has done tasks or performed duties which, considered in their total effect, show that the landlord was materially and significantly involved in the production of the farm commodities.

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(4) Conservation reserve program (CRP). Activities conducted under the CRP do not fall within the definition of “farming business” under Iowa Code section 422.7. If a taxpayer’s only activity is managing CRP land, the taxpayer does not meet the material participation requirement. A taxpayer may still meet the material participation requirement if the taxpayer materially participates in a farming business through a different activity.

(5) Recordkeeping requirements. Taxpayers are required to provide proof of services performed and the hours attributable to those services. Detailed records should be maintained by the taxpayer, on as close to a daily basis as possible at or near the time of the performance of the activity, to verify that the material participation test has been met. However, material participation can be established by any other reasonable means, such as approximating the number of hours based on appointment books, calendars, or narrative summaries. Records prepared long after the activity, in preparation of an audit or proceeding, are insufficient to establish participation in an activity.

302.87(3) Lifetime election. A retired farmer may make a single lifetime election on a form prescribed by the department to exclude all qualifying capital gains from the sale of real property used in a farming business and the sale of certain livestock described in subrules 302.87(5) and 302.87(6). If a retired farmer makes the election described in this subrule, the retired farmer is not eligible to make the election to exclude the net income received pursuant to a farm tenancy agreement covering real property under Iowa Code section 422.7(14) and rule 701—302.88(422) or claim the beginning farmer tax credit under Iowa Code section 422.11E in the same tax year or any subsequent tax year. The election is irrevocable once made.

a. Beginning farmer tax credit. A retired farmer shall not utilize an unclaimed amount of a beginning farmer tax credit in the same tax year they are making an election described in this subrule or in subrule 302.88(3) or in any subsequent tax year.

b. Surviving spouses. A surviving spouse of a deceased retired farmer may be eligible to make the election described in this subrule or the election described in subrule 302.88(3) or exclude the qualifying income pursuant to the election made by the retired farmer prior to death.

(1) A surviving spouse of a deceased retired farmer may make the election described in this subrule or the election described in subrule 302.88(3) on behalf of the deceased retired farmer that the retired farmer would have been eligible to make prior to death. A surviving spouse may only make an election on behalf of the deceased retired farmer by the due date of the tax return, including extensions, for the tax year immediately following the tax year of the retired farmer’s death.

EXAMPLE 1: Farmer A, a retired farmer, owned real property used in a farming business, Plot 1. Farmer A was married to Spouse B. Farmer A sold Plot 1 which generated a capital gain. Farmer A died later that tax year. Farmer A qualified to make an election to exclude qualifying capital gains from the calculation of net income prior to death but did not make an election before death. Spouse B can make an election on behalf of Farmer A on the final tax return.

(2) If a retired farmer made the election described in this subrule or the election described in subrule 302.88(3) prior to death, the surviving spouse of the deceased retired farmer may exclude the qualifying income pursuant to the election made by the retired farmer prior to death. A surviving spouse cannot change the election the deceased retired farmer made. Any election made by the retired farmer prior to death is binding on all real property used in a farming business owned by the retired farmer at the time of death. This election is only binding on the retired farmer and the surviving spouse.

EXAMPLE 2: Farmer C, a retired farmer, owned real property used in a farming business, Plot 2. Farmer C was married to Spouse D. Farmer C met the material participation and holding period requirements. Farmer C made the election to exclude net income from a farm tenancy agreement described in subrule 302.88(3) from Plot 2. Farmer C then died. Spouse D inherited Plot 2 from Farmer C. Spouse D does not qualify to make an election. Spouse D may exclude net income from a farm tenancy agreement from Plot 2 pursuant to the election Farmer C made before death. Spouse D cannot exclude qualifying capital gains with regard to Plot 2 or claim the beginning farmer tax credit.

EXAMPLE 3: Assume the same facts as Example 2 but Spouse D does qualify to make an election independent of Farmer C. Spouse D still cannot exclude qualifying capital gains from Plot 2 or claim

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the beginning farmer tax credit unless Spouse D disclaims Farmer C's election and makes an election as described in subparagraph 3.

EXAMPLE 4: Farmer E, a retired farmer, owned real property used in a farming business, Plot 3, Plot 4, and Plot 5. Farmer E was married to Spouse F. Farmer E met the holding period and material participation requirements. Farmer E sold Plot 3, which generated a capital gain. Farmer E made an election to exclude the capital gain. Farmer E then died. Spouse F inherited Plot 4 and Plot 5 from Farmer E. Plot 4 and Plot 5 are bound by the election Farmer E made before death. Spouse F is eligible to exclude the capital gain from the sale of Plot 4 and Plot 5 pursuant to the election Farmer E made. Spouse F cannot exclude net income from a farm tenancy agreement from Plot 4 or Plot 5 or claim the beginning farmer tax credit.

EXAMPLE 5: Farmer G, a retired farmer, owned real property used in a farming business, Plot 6 and Plot 7. Farmer G was married to Spouse H. Farmer G met the holding period and the material participation requirements. Farmer G made the election to exclude net income from a farm tenancy agreement described in subrule 302.88(3) from Plot 6 and Plot 7. Farmer G then died. Spouse H inherited Plot 6 and Plot 7. Spouse H is bound by the election made by Farmer G on Plot 6 and Plot 7 and may exclude the net income from a farm tenancy agreement for those plots. Spouse H gets remarried to a new spouse, Spouse J. Spouse H then dies. Spouse J inherits Plot 6 and Plot 7 from Spouse H. Spouse J is not a surviving spouse of a retired farmer and is not bound by the election Farmer G originally made on Plot 6 and Plot 7. Spouse J may make an election described in this subrule or described in subrule 302.88(3) on Plot 6 and Plot 7 if Spouse J meets the eligibility criteria.

(3) A surviving spouse of a deceased retired farmer may disclaim the election made by the retired farmer. If a surviving spouse of a deceased retired farmer makes this disclaimer, the surviving spouse is not eligible to deduct qualifying income pursuant to an election made by the retired farmer prior to death. A surviving spouse of a deceased retired farmer shall make this disclaimer on a form prescribed by the department and file the form with the surviving spouse's income tax return. A surviving spouse must make the disclaimer by the due date of the tax return, including extensions, for the tax year immediately following the tax year of the retired farmer's death. If the surviving spouse excluded income on the surviving spouse's return for the tax year of the retired farmer's death pursuant to the election the retired farmer made and wants to disclaim the election, then the surviving spouse must amend the surviving spouse's return to include that income in Iowa net income and adjust tax liability accordingly. If no disclaimer is made by the due date, including extensions, of the surviving spouse's income tax return for the tax year immediately following the tax year of the retired farmer's death, then the surviving spouse is no longer eligible to make a disclaimer and is bound by the election the retired farmer made. The disclaimer is irrevocable once made. Once a disclaimer has been made, a surviving spouse may make a single lifetime election that would also apply to the land previously bound by the deceased retired farmer's election if the surviving spouse meets the definition of a retired farmer. A surviving spouse may make a single lifetime election that would apply to land not bound by the deceased retired farmer's election if the surviving spouse meets the eligibility criteria.

EXAMPLE 6: Farmer K, a retired farmer, owned real property used in a farming business, Plot 8. Farmer K was married to Spouse L. Farmer K met the holding period and the material participation requirements. Farmer K made the election to exclude net income from a farm tenancy agreement described in subrule 302.88(3) from Plot 8. Farmer K then died. Spouse L inherited Plot 8 from Farmer K. Spouse L independently qualifies as a retired farmer to make an election described in this subrule or the election described in subrule 302.88(3). Spouse L may exclude net income from a farm tenancy agreement from Plot 8 pursuant to the election Farmer K made before death, or Spouse L may disclaim that election and make Spouse L's own election to exclude capital gains from Plot 8.

EXAMPLE 7: Assume the same facts as Example 6 except Spouse L does not independently qualify as a retired farmer to make an election described in this subrule or the election described in subrule 302.88(3). Spouse L may exclude net income from a farm tenancy agreement from Plot 8 pursuant to the election Farmer K made before death, or Spouse L may disclaim that election and not exclude income because Spouse L does not qualify to make an election as a retired farmer.

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c. Joint owners. A retired farmer may exclude income pursuant to the election described in this subrule or the election described in subrule 302.88(3) to the extent of the retired farmer's ownership interest in the real property.

(1) A retired farmer who owns real property used in a farming business jointly with a spouse and makes the election described in this subrule or the election described in subrule 302.88(3) may only exclude qualifying income from that real property to the extent of the retired farmer's ownership interest held in that real property. The retired farmer's ownership interest does not include the ownership interest of the retired farmer's spouse. If each spouse qualifies as a retired farmer, each spouse may make different elections on the property they jointly own to the extent of their respective ownership interests. There is a rebuttable presumption that spouses who jointly own real property used in a farming business each have a 50 percent ownership interest in the real property. This can be rebutted with documentation proving a different ownership percentage.

EXAMPLE 8: Farmer M and Farmer N, both retired farmers, are married and own Plot 9 jointly. They each have a 50 percent ownership interest in Plot 9. They both qualify to make the election to exclude qualifying capital gains or net income from a farm tenancy agreement. They file jointly for Iowa tax purposes. In 2023, Farmer M and Farmer N receive \$50,000 total in net income from a farm tenancy agreement covering Plot 9. Farmer M makes the election to exclude net income from a farm tenancy agreement. Farmer N does not make an election. Farmer M is eligible to exclude \$25,000, 50 percent of the net income from Plot 9, from net income. Farmer N must include \$25,000, 50 percent of the net income from the farm tenancy agreement, in net income. Farmer N is still eligible to make an election to exclude qualifying capital gains or net income from a farm tenancy agreement in a subsequent tax year.

EXAMPLE 9: Assume the same facts as Example 8 except Farmer N makes the same election to exclude net income from a farm tenancy agreement. On the jointly filed return, Farmer M and Farmer N can exclude from net income \$50,000, 100 percent of the net income from a farm tenancy agreement.

EXAMPLE 10: Assume the same facts as Example 8 except Farmer N does not qualify to make an election to exclude qualifying capital gains or net income from a farm tenancy agreement. Farmer M can exclude from net income \$25,000, 50 percent of the net income received from a farm tenancy agreement on Plot 9. Farmer N must include in net income \$25,000, 50 percent of the net income from the farm tenancy agreement on Plot 9.

(2) A retired farmer who owns real property used in a farming business jointly with someone who is not the retired farmer's spouse may only exclude qualifying income from that real property to the extent of the retired farmer's ownership interest held in the real property.

EXAMPLE 11: Farmer O, a retired farmer, owns Plot 10 jointly with Farmer P. Farmer O and Farmer P are not taxed as a partnership. Farmer O has a 60 percent ownership interest in Plot 10, while Farmer P has a 40 percent ownership interest. Farmer O qualifies to make an election to exclude qualifying capital gains or net income from a farm tenancy agreement. Farmer P does not. Farmer O and Farmer P sell Plot 10 for a capital gain of \$100,000. Farmer O elects to exclude the capital gain. Farmer O may exclude from net income \$60,000, 60 percent of the capital gain. Farmer P is required to include \$40,000 in net income, 40 percent of the capital gain.

302.87(4) *Net capital gains from the sale of real property used in a farming business.* Net capital gains from the sale of real property used in a farming business may be excluded from the owner's Iowa net income if the owner held the real property used in a farming business for ten or more years and materially participated in a farming business for at least ten years. If the taxpayer is a retired farmer, the taxpayer must make the election described in subrule 302.87(3) to exclude qualifying capital gains. It is not required that the property be located in Iowa for the owner to qualify for the deduction.

a. Material participation means the same as "materially participated" as defined in Iowa Code section 422.7(13) and described in detail in subrule 302.87(2). If the taxpayer is a retired farmer and materially participated in a farming business for ten or more years in the aggregate, then the taxpayer will meet the material participation requirements. If the taxpayer is not a retired farmer, the taxpayer must have materially participated in a farming business for the ten years immediately preceding the sale. When determining whether a taxpayer is no longer materially participating to meet the definition of a

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retired farmer, the material participation test in subparagraph 302.87(2)“e”(5) shall not apply and the participation of the spouse of the taxpayer does not count as participation by the taxpayer.

b. If the taxpayer has held the real property used in a farming business and sells the property to a relative of the taxpayer, the net capital gain from the sale may be excluded from net income regardless of whether the taxpayer met the material participation or holding period requirements.

c. In situations in which real property was sold by a partnership, S corporation, limited liability company, estate, or trust and the capital gain from the sale of the real property flows through to the owners of the business entity for federal income tax purposes, the owners may exclude the capital gain from their net incomes if the real property was held for ten or more years and the owners had materially participated in a farming business for ten years prior to the date of sale of the real property, or ten years in the aggregate if the owner is a retired farmer.

d. Installments received in the tax year from installment sales of real property used in a farming business are eligible for the exclusion of capital gains from net income if all relevant criteria were met at the time of the installment sale.

EXAMPLE: A taxpayer received an installment payment in 2025 from the sale of real property used in a farming business that occurred in 2023. The installment received in 2025 would qualify for the exclusion if the taxpayer had held the real property for a minimum of ten years and had materially participated in a farming business for a minimum of ten years at the time of the sale in 2023.

e. Capital gains from the sale of real property by a C corporation do not qualify for the capital gain deduction.

f. The following noninclusive examples illustrate how this subrule applies:

EXAMPLE 1: S corporation, X, owned 1,000 acres of farmland. Taxpayer A is the sole shareholder of X and had materially participated in X for more than ten years at the time that X sold 500 acres of the farmland for a capital gain of \$100,000. X owned the farmland for more than ten years at the time of the sale. The capital gain recognized by X that passed through to Taxpayer A as the shareholder of X can be excluded from Iowa net income because Taxpayer A met the material participation and holding period requirements.

EXAMPLE 2: Taxpayer B and Taxpayer C are brothers who both owned 50 percent of the stock in an S corporation, Y, that owned 1,000 acres of farmland. Taxpayer B managed all the farming operations for Y from the time Y was formed in 2010. Taxpayer C did not participate in the farming operations. Y sold 200 acres of the farmland to another brother, Taxpayer D, for a \$50,000 gain. \$25,000 of the capital gain passed through to Taxpayer B, and \$25,000 of the capital gain passed through to Taxpayer C. Both Taxpayer B and Taxpayer C had owned the corporation for at least ten years at the time the land was sold, but only Taxpayer B had materially participated in the corporation for at least ten years. Taxpayer B may exclude the \$25,000 capital gain from the land sale because he met the time held and material participation requirements. Taxpayer C may exclude the \$25,000 capital gain because the land was sold to a relative of Taxpayer C.

EXAMPLE 3: Taxpayer E owned and materially participated in a farming business for 15 years and raised row crops. There were 500 acres of land in the farming business, 300 acres had been held for 15 years, and 200 acres had been held for five years. Taxpayer E sold the 500 acres of land. Taxpayer E cannot exclude the capital gain from the sale of the 200 acres that had only been held for five years. Taxpayer E may exclude the capital gain from the sale of the 300 acres of land that had been held for 15 years.

EXAMPLE 4: Taxpayer F owned and materially participated in a farming business for more than ten years. In this business, Taxpayer F farmed a neighbor's land on a crop-share basis throughout the period. Taxpayer F bought 80 acres of land and farmed that land for six years until Taxpayer F sold the land for a capital gain of \$20,000. Taxpayer F cannot exclude the capital gain because the farmland had been held for less than ten years even though Taxpayer F materially participated in a farming business for more than ten years.

EXAMPLE 5: Taxpayer G and Taxpayer H were partners in a partnership since 2008 that owned 80 acres of farmland. Taxpayer G and Taxpayer H are both over 55 years old. The land was sold in 2023 when Taxpayer G and Taxpayer H retired from farming. In all the years Taxpayer G and Taxpayer H

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were partners in the partnership, Taxpayer G materially participated in the farming business. Taxpayer H was a material participant for the years 2008-2013 and 2018-2023. Taxpayer G and Taxpayer H realized a capital gain of \$50,000 from the land sale, which was divided equally between them. Taxpayer G was able to exclude \$25,000 of the capital gain that Taxpayer G received from the sale since Taxpayer G had held the land and materially participated in a farming business for at least ten years at the time the land was sold. Taxpayer H was able to exclude \$25,000 of the capital gain because, although Taxpayer H had not materially participated in a farming business for ten consecutive years when the land was sold, Taxpayer H was a retired farmer and had materially participated in a farming business for ten years in the aggregate.

EXAMPLE 6: Taxpayer J had a farming business that Taxpayer J owned and materially participated in for 20 years. There were two tracts of farmland in the farming business. Taxpayer J sold one tract of farmland in the farming business that Taxpayer J had held for more than ten years for a \$50,000 capital gain. The farmland was sold to a person who was not a relative. During the same year, Taxpayer J had \$30,000 in long-term capital losses from sales of stock. In this situation, the capital gains would not be applied against the capital losses. Because the capital losses are unrelated to the farming business, Taxpayer J does not have to reduce the Iowa capital gain deduction by the capital losses from the sales of stock.

EXAMPLE 7: Taxpayer K had owned farmland, Plot A, and had materially participated in a farming business since 2010. In 2018, Taxpayer K entered into a like-kind exchange under Section 1031 of the Internal Revenue Code for farmland, Plot B. Taxpayer K continued to materially participate in a farming business. Plot B was sold in 2023, resulting in a capital gain. Under Section 1223 of the Internal Revenue Code, the holding period for the capital gain starts in 2010. Taxpayer K held Plot B for less than ten years, but because Taxpayer K met the ten-year holding period requirement under Section 1223, the capital gain from the sale qualifies for the Iowa capital gain deduction.

EXAMPLE 8: Taxpayer L and Taxpayer M, a married couple, owned farmland in Iowa since 1995. Taxpayer L died in 2010 and, under Taxpayer L's will, Taxpayer M acquired a life interest in the farm. The farmland was managed by their child, Taxpayer N, after Taxpayer L's death. Taxpayer N had a remainder interest. Taxpayer M died in 2018, and Taxpayer N continued to materially participate and manage the farm operation. Taxpayer N sold the farmland in 2023 and reported a capital gain. Under Section 1223 of the Internal Revenue Code, the holding period for the capital gain starts in 2010, when Taxpayer L died. Because the holding period for the capital gain was ten years or more, and Taxpayer N met the material participation requirement, Taxpayer N can deduct the capital gain.

302.87(5) *Net capital gains from the sale of cattle or horses used for certain purposes and held for 24 months by taxpayers who are retired farmers.* Net capital gains from the sale of cattle or horses held for 24 months or more for draft, breeding, dairy, or sporting purposes may be excluded from the taxpayer's Iowa net income if the taxpayer is a retired farmer and the taxpayer made the election described in subrule 302.87(3). The retired farmer must have materially participated in the farming business in which the cattle or horses were held for five of the eight years preceding the retired farmer's retirement or disability and must have sold all or substantially all of the retired farmer's interest in the farming business by the time the election is made. For purposes of this subrule and subrule 302.87(6), "substantially all" means 90 percent of the interest in the farming business.

a. Material participation means the same as "materially participated" as defined in Iowa Code section 422.7(13) and described in detail in subrule 302.87(2). When determining whether a taxpayer is no longer materially participating to meet the definition of a retired farmer, the material participation test in subparagraph 302.87(2) "e"(5) shall not apply and the participation of the spouse of the taxpayer does not count as participation by the taxpayer.

b. Whether cattle or horses sold by the taxpayer after the taxpayer has held them 24 months or more were held for draft, breeding, dairy, or sporting purposes may be determined from federal court cases on such sales and the standards and examples included in 26 CFR Section 1.1231-2. Proper records should be kept showing purchase and birth dates of cattle and horses. The absence of records may make it impossible for the owner to show that the owner held a particular animal for the necessary holding

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period. Whether cattle or horses are held for draft, breeding, dairy, or sporting purposes depends on all the facts and circumstances of each case.

c. Capital gains from sales of qualifying cattle or horses by an S corporation, partnership, or limited liability company, where the capital gains flow through to the owners of the respective business entity for federal income tax purposes, qualify for the capital gain deduction to the extent the owners receiving the capital gains are retired farmers who meet all the relevant criteria.

d. Capital gains from sales of qualifying cattle or horses by a C corporation are not eligible for the capital gain deduction.

302.87(6) *Net capital gains from the sale of breeding livestock, other than cattle or horses, held for 12 or more months by taxpayers who are retired farmers.* Net capital gains from the sale of breeding livestock, other than cattle or horses, held for 12 or more months may be excluded from the taxpayer's Iowa net income if the taxpayer is a retired farmer and the taxpayer made the election described in subrule 302.87(3). The retired farmer must have materially participated in the farming business in which the breeding livestock, other than cattle or horses, were held for five of the eight years preceding the retired farmer's retirement or disability. The retired farmer must have sold all or substantially all of the retired farmer's interest in the farming business by the time the election is made.

a. Material participation means the same as "materially participated" as defined in Iowa Code section 422.7(13) and described in detail in subrule 302.87(2). When determining whether a taxpayer is no longer materially participating to meet the definition of a retired farmer, the material participation test in subparagraph 302.87(2) "e"(5) shall not apply and the participation of the spouse of the taxpayer does not count as participation by the taxpayer.

b. If livestock other than cattle or horses is considered to have been held for breeding purposes under the criteria established in 26 CFR Section 1.1231-2, the livestock will also be deemed to have been breeding livestock for purposes of this rule. Proper records should be kept showing purchase and birth dates of breeding livestock. The absence of records may make it impossible for the owner to show that the owner held a particular animal for the necessary holding period. Whether livestock are held for breeding purposes depends on all the facts and circumstances of each case.

c. Capital gains from sales of qualifying livestock other than cattle or horses by an S corporation, partnership, or limited liability company, where the capital gains flow through to the owners of the respective business entity for federal income tax purposes, qualify for the capital gain deduction to the extent the owners receiving the capital gains are retired farmers who meet all the relevant criteria.

d. Capital gains from the sale of breeding livestock other than cattle or horses by a C corporation are not eligible for the capital gain deduction.

302.87(7) *Installments from sales consummated before January 1, 2023.* Installments from sales that were consummated before January 1, 2023, that result in net capital gains qualify for the capital gain deduction if the requirements of Iowa Code section 422.7(21) and rule 701—302.38(422), as they existed prior to January 1, 2023, were met at the time the sale was consummated.

This rule is intended to implement Iowa Code section 422.7(13).

ITEM 3. Adopt the following new rule 701—302.88(422):

701—302.88(422) Net income from a farm tenancy agreement covering real property. An eligible individual may elect to exclude net income from a farm tenancy agreement covering real property held by the individual for ten or more years from the computation of net income, if the eligible individual materially participated in a farming business for ten or more years.

302.88(1) Definitions. Unless otherwise indicated in this rule or required by the context, all words and phrases used in this rule that are defined under Iowa Code section 422.7(14) shall have the same meaning as provided to them under that Iowa Code section.

"*Disabled individual*" means an individual who is receiving benefits as a result of retirement from employment or self-employment due to disability. In addition, a person is considered to be a disabled individual if the individual is determined to be disabled in accordance with criteria established by the Social Security Administration or other federal or state governmental agency.

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“Held” shall be determined with reference to the holding period provisions of Section 1223 of the Internal Revenue Code and the federal regulations pursuant thereto.

302.88(2) Material participation. Material participation for the purposes of this rule is determined pursuant to subrule 302.87(2) and the definition of “materially participated” in Iowa Code section 422.7(14). An eligible individual meets the material participation requirements if the individual materially participated in a farming business for ten years or more in the aggregate. When determining whether an eligible individual has stopped materially participating, the material participation test in subparagraph 302.87(2) “e”(5) and the material participation of a spouse shall not apply.

302.88(3) Lifetime election. An eligible individual may make a single lifetime election on a form prescribed by the department to exclude net income pursuant to a farm tenancy agreement covering real property. If an eligible individual makes the election described in this subrule, the eligible individual is not eligible to make an election to exclude the capital gain from the sale of real property used in a farming business or certain livestock under Iowa Code section 422.7(13) and rule 701—302.87(422) or claim the beginning farmer tax credit under Iowa Code section 422.11E in the same tax year or any subsequent tax year. The election is irrevocable once made.

a. Beginning farmer tax credit. A retired farmer shall not utilize an unclaimed amount of a beginning farmer tax credit in the same tax year the retired farmer is making an election described in this subrule or in subrule 302.87(3) or in any subsequent tax year.

b. Surviving spouses. A surviving spouse of a deceased eligible individual may make the election described in this subrule or the election described in subrule 302.87(3) subject to the provisions of subrule 302.87(3). For purposes of this subrule, “retired farmer” as used in subrule 302.87(3) has the same meaning as “eligible individual.”

c. Joint owners. An eligible individual may exclude income pursuant to the election described in this subrule or the election described in subrule 302.87(3) to the extent of the eligible individual’s ownership interest in the real property subject to the provisions of subrule 302.87(3). For purposes of this subrule, “retired farmer” as used in subrule 302.87(3) has the same meaning as “eligible individual.”

302.88(4) Amount of exclusion. An eligible individual that has made the election described in subrule 302.88(3) may exclude the amount of net income received from a farm tenancy agreement covering real property. An eligible individual may exclude net income from any qualifying farm tenancy agreement covering real property if the holding period requirements are met with respect to the real property in question, including agreements that are entered into after the single lifetime election is made. The amount of the exclusion cannot exceed the fair profits which would normally arise from a farm tenancy agreement between two parties operating at arm’s length.

This rule is intended to implement Iowa Code section 422.7(14).

[Filed 9/29/23, effective 11/22/23]

[Published 10/18/23]

EDITOR’S NOTE: For replacement pages for IAC, see IAC Supplement 10/18/23.